

Jill Brewer, 3/25/2014

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1 UNITED STATES DISTRICT COURT  
 2 SOUTHERN DISTRICT OF OHIO  
 3 WESTERN DIVISION

4 HEALTHY ADVICE :  
 5 NETWORKS, LLC, :  
 6 :  
 7 Plaintiff, :  
 8 :  
 9 vs. : Case No. 1:12CV610  
 10 :  
 11 CONTEXTMEDIA, INC., :  
 12 :  
 13 Defendant. :  
 14 :  
 15 :  
 16 :  
 17 :  
 18 :  
 19 :  
 20 :  
 21 :  
 22 :  
 23 :  
 24 :

10 Videotaped Deposition of JILL BREWER, a  
 11 witness herein, taken by the defendant as  
 12 upon cross-examination, pursuant to the  
 13 Federal Rules of Civil Procedure and pursuant  
 14 to notice of counsel as to the time and place  
 15 and stipulations hereinafter set forth, at  
 16 the offices of Keating Muething & Klekamp,  
 17 PLL, One East Fourth Street, Suite 1400,  
 18 Cincinnati, Ohio 45202, at 9:30 a.m.,  
 19 Tuesday, March 25, 2014, before Paul Jahn,  
 20 Videographer and ANN M. BELMONT, RPR, a  
 21 Registered Professional Reporter and Notary  
 22 Public within and for the State of Ohio.

- - -

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1 APPEARANCES:

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3

## 1 S T I P U L A T I O N S

2 It is stipulated by counsel for the  
3 respective parties that the deposition of  
4 JILL BREWER, a witness herein, may be taken  
5 at this time by the defendant as upon  
6 cross-examination and pursuant to the Federal  
7 Rules of Civil Procedure and notice to take  
8 deposition, all other legal formalities being  
9 waived by agreement; that the deposition may  
10 be taken in stenotype by the Notary Public  
11 Reporter and transcribed by her out of the  
12 presence of the witness; that availability of  
13 the deposition to the witness for examination  
14 and signature is expressly waived.

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Jill Brewer, 3/25/2014

4

1	INDEX				
2	WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS
3	JILL BREWER				
4	BY MR. O'BRIEN:		6		142
5	BY MR. BERNAY:	137			
6	EXHIBIT IDENTIFIED				PAGE
7	Exhibit 19	e-mail exchange			58
8	Exhibit 24	e-mail exchange			72
9	Exhibit 34	e-mail exchange			77
10	Exhibit 35	e-mail exchange			81
11	Exhibit 36	e-mail exchange			89
12	Exhibit 40	e-mail exchange			90
13	Exhibit 44	e-mail exchange			91
14	Exhibit 47	e-mail exchange			92
15	Exhibit 74	e-mail exchange			99
16	Exhibit 80	e-mail exchange			110
17	e-mail communication				110
18	Exhibit 81	e-mail exchange			115
19	Exhibit 82	e-mail exchange			119
20	Exhibit 83	e-mail exchange			124
21	Exhibit 84	e-mail exchange			127
22	Exhibit 85	e-mail exchange			130
23	Exhibit 86	entry from the CMS			134
24	database				
25	OBJECTIONS				PAGE LINE
26	MR. BERNAY:			20	3
27	MR. BERNAY:			25	21
28	MR. BERNAY:			34	20
29	MR. BERNAY:			40	1
30	MR. BERNAY:			41	17
31	MR. BERNAY:			42	11
32	MR. BERNAY:			52	18
33	MR. BERNAY:			53	1
34	MR. BERNAY:			53	11
35	MR. BERNAY:			56	12
36	MR. BERNAY:			60	19
37	MR. BERNAY:			61	12
38	MR. BERNAY:			61	21
39	MR. BERNAY:			62	7
40	MR. BERNAY:			62	15

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Jill Brewer, 3/25/2014

5

1	MR. BERNAY:	65	24
	MR. BERNAY:	75	5
2	MR. BERNAY:	76	6
	MR. BERNAY:	77	4
3	MR. BERNAY:	79	1
	MR. BERNAY:	80	13
4	MR. BERNAY:	84	5
	MR. BERNAY:	97	21
5	MR. BERNAY:	98	24
	MR. BERNAY:	102	13
6	MR. BERNAY:	105	7
	MR. BERNAY:	108	5
7	MR. BERNAY:	112	1
	MR. BERNAY:	112	21
8	MR. BERNAY:	113	24
	MR. BERNAY:	117	8
9	MR. BERNAY:	118	23
	MR. BERNAY:	127	5
10	MR. BERNAY:	132	13
	MR. BERNAY:	135	10
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			

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6

1 MR. JAHN: We're on the record.

2 THE WITNESS: I get a copy, okay.

3 JILL BREWER,

4 a witness herein, of lawful age, having

5 been first duly sworn as hereinafter

6 certified, was examined and testified as

7 follows:

8 CROSS-EXAMINATION

9 BY MR. O'BRIEN:

09:52 10 Q. State your full name, Ms.  
11 Brewer.

12 A. Jill Marie Brewer.

13 Q. We just had a discussion before  
14 we went on the record. We just met, my name  
15 is Dick O'Brien, I represent ContextMedia in  
16 a lawsuit that Healthy Advice Network has  
17 brought against it. I'll be asking you a  
18 series of questions today. If at any point  
19 in time you don't understand any one of my  
09:53 20 questions or you're confused by it, just let  
21 me know, I'll try to fix it. Otherwise, if  
22 you go ahead and answer the question, we're  
23 all going to leave the room at the end of the  
24 day with the understanding that you

Jill Brewer, 3/25/2014

7

1 understood the questions; is that fair?

2 A. Yeah.

3 Q. Also, as we just discussed  
4 before we went on the record, whenever you  
5 want to take a break, just let us know,  
6 you're sort of the boss of this show. When  
7 you want to take a break, let us know, we'll  
8 take a break. The only thing I would ask of  
9 you is that you not request a break while a  
10 question is pending, go ahead and answer the  
11 question, then we'll take the break, if  
12 that's okay with you.

13 A. Yes.

14 Q. First of all, I want to thank  
15 you for appearing here today. I know that  
16 you didn't have to, you weren't under  
17 subpoena, and you're no longer with the  
18 company, so I appreciate your showing up here  
19 today. Have you been deposed before?

20 A. No.

21 Q. And you're not represented by  
22 counsel here today?

23 A. I am not.

24 Q. And did you do anything to

Jill Brewer, 3/25/2014

8

1 prepare yourself for giving testimony here  
2 today?

3 A. I did not.

4 Q. What is your educational  
5 background?

6 A. I have a bachelor of arts or  
7 science degree from the University of  
8 Tennessee in marketing communications.

9 Q. When did you receive that  
10 degree?

11 A. In 1987.

12 Q. You're much younger than me. And  
13 what have you done by way of employment since  
14 you graduated in 1987?

15 A. I worked for a company in  
16 Knoxville, Tennessee, called Whittle  
17 Communications. They -- Chris Whittle is the  
18 founder and architect of Play Space Media and  
19 why you guys are here. So I was an executive  
20 there, vice president and partner, and I led  
21 their field sales operations, much like what  
22 I did when I was recruited to come to Healthy  
23 Advice.

24 Q. Why did you leave Whittle?

Jill Brewer, 3/25/2014

9

1           A.       I didn't really leave. They -- I  
2     left from there, I -- one of the projects  
3     they started, I don't know if you recall  
4     Channel One, but that led into what is called  
5     the Edison Project and Edison Schools, so I  
6     launched that. And then I went to work for  
7     them, specifically with Hamilton Jordan and  
8     Benno Schmidt and all that whole clan and  
9     started Edison Schools.

09:55 10           Q.       Tell us what Edison Schools was  
11     or is.

12           A.       Edison Schools is a -- it's a  
13     what you call an education management  
14     organization. So they would partner with  
15     public schools and manage them for the school  
16     for a fee.

17           Q.       What sort of services would they  
18     provide to the school? Just management of  
19     schools?

09:55 20           A.       They took over the school.

21           Q.       I see. Are they still in  
22     operation?

23           A.       Yeah, they are. They now run  
24     charter schools across the country, and they

Jill Brewer, 3/25/2014

10

1 work in partnership with public schools and  
2 then they have this charter school movement  
3 as well.

4 Q. So when they were dealing with  
5 public schools, the public school district  
6 would come to Edison and they'd contract and  
7 have Edison, basically, run its school  
8 district?

9 A. Well, it was my job to recruit  
09:56 10 them to do so. But, yes, basically, the job  
11 was, let us -- basically, the job is, let us  
12 run your school, because we can do it better  
13 and make a profit.

14 Q. I see.

15 A. And you serve as sort of the  
16 benchmark for the remainder of the school  
17 district, so that they can use your learnings  
18 for the remainder of their district and  
19 capitalize. So sort of like a springboard or  
09:56 20 benchmark.

21 Q. Can you give me one example of  
22 where you guys did that?

23 A. We're right now doing it for the  
24 state of Hawaii. We -- they are doing it for

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Jill Brewer, 3/25/2014

11

1 the state of Hawaii. They did it in  
2 Philadelphia, we did it in -- I worked with  
3 the Perry Township in Indianapolis.

4 Q. So your job was to market the  
5 company to schools and recruit schools into  
6 the program?

7 A. Em-hm.

8 Q. Then why did you join Healthy  
9 Advice Networks?

09:57 10 A. I was working for Edison, and  
11 all of my jobs I've been recruited. I  
12 haven't really looked for a job before, but  
13 people who knew me before brought me over. So  
14 I was recruited or asked to come to work  
15 there because of my experience at Whittle  
16 Communications.

17 Q. And I think you made a comment  
18 earlier that Whittle Communications is, in a  
19 sense, why we're all here today. Were they  
09:57 20 really the pioneer of this industry?

21 A. Chris Whittle, founder.

22 Q. When you first started for HAN,  
23 what was your title and responsibilities?

24 A. Vice president physician

Jill Brewer, 3/25/2014

12

1 recruitment or --

2 Q. Did that change over time?

3 A. I departed as executive vice  
4 president in charge of field sales and  
5 service. Over a period of seven, eight years.

6 Q. When did you become an executive  
7 VP?

8 A. Maybe three years in.

9 Q. So was it when you became an  
09:58 10 executive VP that you became in charge of not  
11 just the patient -- or physician recruitment  
12 side of the business, but also the physician  
13 service side of the business?

14 A. Yeah, that happened over time.  
15 It started -- I started, what happened was,  
16 is that, just like in any organization when  
17 you're selling something, and then your  
18 services and delivery are different than what  
19 you're selling, right? So there's a mix.

09:58 20 And then you also had the install. So when I  
21 was selling, you would have -- we used  
22 third-party vendors for install, and that  
23 experience was very different than what I  
24 sold, the experience that customers had. And

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13

1 then you had the install, then you had the  
2 ongoing service. So it was, like, very  
3 siloed so that the vision was to bring it  
4 together so it's a consistent or a consistent  
5 customer experience. So over time, I went  
6 from being in charge of the physician  
7 recruitment to the onboarding of the  
8 practices, because that was difficult. And  
9 so that at least got managed, and then --  
09:59 10 consistently. And then from there I  
11 eventually took responsibility for the  
12 installs and then eventually responsibility  
13 for the ongoing service, working  
14 communications, including the website. So  
15 basically, we created what's called the  
16 customer experience team. So if it touched  
17 the customer in the physician practice, as  
18 opposed to the climate, PhRMA, it was under  
19 one area of management. And that turned out  
09:59 20 to be a beautiful thing.

21 Q. And how long did you have --

22 A. That responsibility?

23 Q. -- this combination of all of  
24 the responsibilities you just described?

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14

1 A. Three to four years. I don't  
2 have my resumé here, but I could look it up.

3 Q. You're obviously, at that point  
4 in time, if you weren't before, a member of  
5 very senior management, right?

6 A. Correct.

7 Q. And during this three- or  
8 four-year period when you're in charge of all  
9 aspects of the physician recruitment,  
10 installation service business, who are you  
11 reporting to?

12 A. I reported to Mike McAllister.

13 Q. He was the CEO?

14 A. COO.

15 Q. And how many folks, round  
16 numbers, I know you're not going to know  
17 exactly, were reporting to you when you were  
18 in charge of this whole operation?

19 A. I do know that because it's on  
20 my resumé. That would be about 70 FTEs and  
21 then we had probably ten-plus vendors, and  
22 maybe 1000, 2000 contractors under their  
23 service.

24 Q. A lot of people?

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15

1           A.       Well, the contractors aren't  
2     reporting to you, but you are directing and  
3     leading and setting, you know, negotiating  
4     and all that stuff.

5           Q.       Now, why did you leave Healthy  
6     Advice?

7           A.       I left Healthy Advice because  
8     new management was coming in, and -- and as  
9     we were looking at the books, it was --  
10:01 10    basically, my position was eliminated due to  
11    cost cutting initiatives.

12          Q.       Mr. Campbell was here yesterday  
13    and testified that, basically, a decision was  
14    made at some point in time to change out  
15    virtually all the senior management including  
16    you and eventually him as well. Do you agree  
17    with that view?

18          A.       Do I agree with that view? I  
19    don't know, I'm not privy. I wasn't a part  
10:01 20    of the decisionmaking. I offered my own  
21    departure. I said if you do X, Y and Z, you  
22    don't need me anymore, and so I was not asked  
23    to leave, but creating the -- my field  
24    operations, I guess, I built a really good

Jill Brewer, 3/25/2014

16

1 business strategy and said, if you do this,  
2 you don't need me and you can save all this  
3 money, so they eliminated my position.

4 Q. So if they --

5 A. Through my initiation.

6 Q. But they eliminated your  
7 position, they didn't put anyone in place of  
8 you to be in charge of all these aspects of  
9 the customer experience?

10:02 10 A. Nope. They -- one person, the  
11 person below me who did field -- who ran sort  
12 of the ops, she just --

13 Q. Who was that person?

14 A. Kimberly Theiss.

15 Q. Okay.

16 A. So Kimberly continued doing what  
17 she was doing, and then the sales, I don't  
18 know what they did with that.

19 Q. How about customer service, Amy  
10:02 20 Finley?

21 A. Yeah, em-hm.

22 Q. These are all people that  
23 reported to you before?

24 A. Em-hm.

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17

1 Q. You have to -- they prefer you  
2 to say yes.

3 A. Oh, I'm sorry, yes. They all  
4 reported to me before.

5 Q. Did you get a package when you  
6 left?

7 A. Yeah, there was a standard  
8 package that I received that's part of the  
9 protocol that is in the handbook or the guide  
10 lines or whatever.

11 Q. Are you still receiving payments  
12 under that package?

13 A. No. I wish.

14 Q. Okay.

15 A. It was a lump sum at departure.

16 Q. Do you know whether or not this  
17 lawsuit that brings us here together today  
18 was pending at the time you left the company?

19 A. It was not.

20 Q. And I take it, then, you have no  
21 agreements with Healthy Advice concerning  
22 this lawsuit?

23 A. I do not.

24 Q. You were with Healthy Advice

Jill Brewer, 3/25/2014

18

1 nine years?

2 A. I came in '04 and departed in  
3 '13, so -- no, I departed in '12.

4 Q. Eight years?

5 A. I think I came in '04. '06. I  
6 came in '06 maybe. I came in '06 and  
7 departed '04.

8 Q. Your LinkedIn says July 2004 to  
9 April 2012.

10:03 10 A. Okay. Then that's how long I  
11 was there.

12 Q. It says seven years, ten months?

13 A. Yeah, thank you.

14 Q. When you were at Healthy Advice,  
15 did you believe it was important to make sure  
16 that you were being truthful and honest in  
17 your communications within the company?

18 A. Oh, I was, and still am, yes. I  
19 was, yeah.

10:04 20 Q. Okay.

21 A. Yes.

22 Q. And that would include e-mail  
23 communications, right?

24 A. Correct.

Jill Brewer, 3/25/2014

19

1 Q. And if you -- it came to your  
2 attention that one of these many people that  
3 reported to you was not being truthful or  
4 honest or accurate in their communications, I  
5 assume that you would do something about it?

6 A. If I was aware, yes.

7 Q. You, or to your knowledge,  
8 anyone reporting to you, would never  
9 intentionally say something that was  
10 misleading or not completely truthful?

11 A. I would hope not. I do not know  
12 what they would do, but I would hope not. It  
13 wouldn't have been -- I would hope not.  
14 That's not the way I led. And it wasn't the  
15 expectations I set.

16 Q. Thank you. Now, at some time it  
17 came to your -- at some point in time it came  
18 to your attention that ContextMedia was  
19 competing with HAN as to certain of the  
20 networks, right?

21 A. What did you say?

22 Q. At one point in time it came to  
23 your attention that ContextMedia was  
24 competing with HAN with respect to certain of

Jill Brewer, 3/25/2014

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1 the networks?

2 A. Certain of the networks?

3 MR. BERNAY: Object to the form.

4 You can still answer the question.

5 Q. If you don't understand it, I'll  
6 try to do it differently.

7 A. Certain, I don't know what  
8 certain of the networks mean.

9 Q. Okay. I say certain of the  
10:05 10 networks, HAN had a network it called ACN,  
11 right?

12 A. You mean Arthritic Care Network?

13 Q. Exactly.

14 A. Yeah.

15 Q. And then it had a network it  
16 called PCN, right?

17 A. Oh, yeah. We had our primary  
18 care networks, yeah.

19 Q. And then it had a network it  
10:05 20 called DHN --

21 A. Yeah, there's nine. There were  
22 nine of them.

23 Q. That's what I was --

24 A. That's what you were referring

Jill Brewer, 3/25/2014

21

1 to. So you're saying that ContextMedia had  
2 products that would be competing with some of  
3 those networks?

4 Q. Correct.

5 A. Yes. I was -- I am aware, was  
6 aware that, yeah, they were a competitor.

7 Q. Were you aware in the 2010-2012  
8 time frame, before you left, of other  
9 competitors as to the ACN, DHN or PCN  
10:06 10 networks beside ContextMedia?

11 A. Yes.

12 Q. Who were those other competitors  
13 that you were aware of?

14 A. I don't recall their name, but  
15 one was based in North Carolina. I don't  
16 recall their names though.

17 Q. Do you recall that it was a  
18 competitive environment?

19 A. We were pretty dominant, so the  
10:06 20 only environment that I perceived to be  
21 competitive was ACN. The other environments,  
22 you know, it was a big world out there.  
23 There's enough for everybody.

24 Q. Did you, when you were there,

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22

1 keep track of market share?

2 A. Market share. That's all very  
3 relative, so you can't, say, keep track of  
4 market share, because it's how people look at  
5 it. But we were, by far, had the largest  
6 placement distribution.

7 Q. And that's why I asked the  
8 question. You made a comment a moment ago  
9 that Healthy Advice was dominant.

10:07 10 A. Yeah, because we had the largest  
11 distribution.

12 Q. As to PCN, ACN and DHN, all  
13 three?

14 A. DHN?

15 Q. The Diabetes Health Network.

16 A. We don't have a Diabetes Health  
17 Network.

18 Q. Did HAN at one point have a  
19 Diabetes Health Network that --

10:07 20 A. Not while I was there.

21 Q. Okay. Let's take it then with  
22 respect to PCN and ACN. Was HAN dominant in  
23 both of those networks?

24 A. PCN?

Jill Brewer, 3/25/2014

23

1 Q. Right.

2 A. Definitely PCN and ACN, I think  
3 so, but it was so small, I don't know that  
4 anybody was dominant.

5 Q. When you say so small --

6 A. Well, the opportunity. I mean,  
7 it's just a -- there's what? How many  
8 rheumatologists try to get in one? There's  
9 only, like, I don't know. There just aren't  
10:08 10 that many of them, and they have four  
11 offices. I mean, there just aren't that  
12 many, so I think it would be hard for anybody  
13 to dominate that.

14 Q. Do you recall how large the ACN  
15 market was in terms of practices?

16 A. I mean, our distrubution?

17 Q. No, overall. The whole market.  
18 You said the market's so small.

19 A. I'm going to -- I'd have to  
10:08 20 guess, so under 10,000.

21 Q. And just for relative  
22 comparison, what was the rough size of the  
23 PCN market?

24 A. Again, it's how you view it. So

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24

1 it would be huge. Meaning, I would say -- I

2 can't tell you, because this would be the

3 fact stuff, but I would say it's huge.

4 Meaning that, do you, like, look at it by --

5 I mean, you can look up how many primary care

6 physicians are out there. Sometimes, you

7 know what you do, you have doctors who are

8 hospitalists that are considered primary

9 care, but they work in the hospital. So are

10:09 10 they, you know, part of the market? There

11 are primary care doctors who work in the

12 government, there are primary care doctors

13 who work in VA, there are primary care

14 doctors who work in -- who work for offices,

15 so are you looking at offices or looking at

16 doctors? I mean --

17 Q. Okay.

18 A. -- there are marketing experts

19 who can do that. But I'm just saying it's

10:09 20 how you slice and dice it.

21 Q. Fair enough. Do you feel like,

22 based upon your experience at Healthy Advice,

23 that you got a sense of what factors are

24 important to a practice when considering

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Jill Brewer, 3/25/2014

25

1 whether or not to select a point of care  
2 provider?

3 A. I can tell you what we promoted.

4 Q. Well --

5 A. I think I can remember.

6 Q. In your experience, was the  
7 quality of the health-related programming  
8 important to a practice in selecting a POC  
9 provider?

10:10 10 A. The most important, what that  
11 would be one.

12 Q. Okay. You were about to tell me  
13 what you thought the most important was.

14 A. No. I was going to say what --  
15 when you -- I guess, one of the most  
16 important things, they need to trust you.

17 Q. Is another one the quality of  
18 the entertainment-related program? Is that  
19 an important factor in selecting a POC  
10:10 20 provider?

21 MR. BERNAY: Object to the form.  
22 You can still answer.

23 A. We did not promote that.

24 Q. I'm not really asking you what

Jill Brewer, 3/25/2014

26

1 you promoted. I'm asking you whether you have  
2 an understanding, based upon your experience  
3 working and promoting to practices, what  
4 factors they find important in making that  
5 decision. And if you don't know, that's  
6 fine.

7 A. Yeah. I would -- and this is  
8 going to sound like being a smartass, but if  
9 we didn't promote it, I didn't think it was  
10 important.

11 Q. Okay. So then why don't you tell  
12 me what you promoted.

13 A. Do you have any copy of our  
14 sales collateral materials? I'm sure you do.  
15 I've got to believe you do.

16 Q. I'm not sure I have it.

17 A. Yeah, because Context would have  
18 it. So if you look at what we promoted, we  
19 promoted quality, we promoted reliability, we  
20 promoted truthfulness, we promoted service.  
21 They wanted content they could trust. And we  
22 promoted a partnership that we would work in  
23 partnership together.

24 Q. Those are the things?

Jill Brewer, 3/25/2014

27

1 A. That's what I recall.

2 Q. Okay.

3 A. I mean, because you have to be  
4 very earnest in this field because you're  
5 using their office as your home. I mean,  
6 you're basically walking in their office and  
7 saying, can we be a part of it. And so you  
8 have to come in a very servant approach, in  
9 my opinion, but that's my approach.

10:12 10 Q. And when you -- the first factor  
11 you listed you promoted because you thought  
12 it was important was quality. And when you  
13 say quality, what do you mean by that?

14 A. The quality of the content, the  
15 quality of the materials, the quality of the  
16 service, the quality of the support and the  
17 customer service. I mean, throughout.

18 Q. Okay. The second thing you told  
19 me about or that you mentioned was  
10:12 20 reliability. What do you mean by  
21 reliability?

22 A. That the service works and it  
23 works as -- as we intended and all that.

24 Q. Okay.

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Jill Brewer, 3/25/2014

28

1           A.       What reliability kind of means,  
2       I'm sorry, that.

3           Q.       I apologize if some of my  
4       questions seem dumb --

5           A.       I know, I apologize. I'm just  
6       saying reliability. So, yes, I do, yeah,  
7       that works.

8           Q.       Well, but reliability in this  
9       context does not mean reliability in some  
10      other context, and that's --

11          A.       So reliability that it works and  
12      that you're responsive.

13          Q.       And the next thing you mentioned  
14      was trustworthiness?

15          A.       Yeah, they want to know that the  
16      content is -- they care very much about their  
17      patients and we wanted to make sure that the  
18      content was consistent with their -- with  
19      what they believed, you know, was good.

20          Q.       And the next thing you mentioned  
21      was service. I take it that means service of  
22      the equipment?

23          A.       It's allover service. So it's,  
24      again, you pick up the phones, somebody's

Jill Brewer, 3/25/2014

29

1 going to respond to you, you have a problem,  
2 it gets repaired, it's, you know.

3 Q. The last thing you mentioned was  
4 partnership?

5 A. Yeah, like I said -- mentioned,  
6 consistent with what I said, that it was  
7 their point of view that this was their -- we  
8 talked, this was their -- this is their  
9 office, this is their home, and they're  
10:14 10 agreeing to allow us to come into their home,  
11 so we talk about partnership and providing  
12 them, as you know, these products are --  
13 there's no fee associated. So it has to be a  
14 partnership, and that you're providing, you  
15 know, programs and services, there's no --  
16 there's not a fee exchanged, and because  
17 there's no fee exchanged, we have to deliver  
18 on services because they're allowing us to  
19 use their space. And that is a partnership.

10:14 20 Q. And, obviously, you appreciate  
21 and understand, during this process, that the  
22 practice can have whatever they want in their  
23 waiting room, right?

24 A. Can -- they can have whatever

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Jill Brewer, 3/25/2014

30

1     they want?  It's their home, they can do  
2     whatever.  Well, it's a system now, so it's  
3     hospital administrators make those decisions.  
4     But way back in the day, it was individual  
5     practices, and so this is their home, they  
6     can do --

7             Q.     They can have hanging on the  
8     wall whatever they want?

9             A.     -- it's their choices.  They --  
10:15 10     in a partnership, within guidelines, because  
11     there -- it was my belief that there were  
12     other companies who wanted to create these  
13     long-term contracts that, really, I don't  
14     even think can be legal, but forgetting what  
15     I think.  But we create an environment that if  
16     you give us a notice, I don't recall the  
17     length of that notice, but if you give us  
18     advanced notice, you can discontinue.  And  
19     that's one of the reasons we were able to  
10:15 20     grow the network as we did, because we were  
21     able to build with trust and partnership.

22             Q.     And why did Healthy Advice want  
23     advanced notice if the practice was going to  
24     discontinue service?

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31

1           A.       Why -- everyone would. You want  
2   advanced notice because you need to be able  
3   to plan to take the equipment off the wall,  
4   because the practice doesn't own the  
5   equipment. And that was part of the  
6   agreement, as far as the equipment, it  
7   remains ours, it is not their equipment, it  
8   is our equipment. So we are putting it in  
9   their office, they are allowing us to let it  
10:16 10   be there, but they don't own it, they can't  
11   take -- they couldn't take it off the wall,  
12   they can't manipulate it, they couldn't turn  
13   it on or off, they couldn't do anything with  
14   it. They -- the agreement is for the  
15   content, for the rich educational content,  
16   you allow us to place this in here and we do  
17   our best effort to make it the quality of  
18   product that you enjoy and that your patients  
19   appreciate it, respect, and then, in turn,  
10:16 20   you know, it's a win-win. And if you choose  
21   to discontinue the network, you need to give  
22   us notification so that we can arrange to get  
23   someone back out there, because it's  
24   extensive, get somebody back out there, take

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Jill Brewer, 3/25/2014

32

1 it off the wall, and get it back.

2 Q. Okay.

3 A. And that's reasonable.

4 Q. And I think you told us a moment  
5 ago that, at least in the last three or four  
6 years of your position, in addition to sales  
7 to practices and service of practices, the  
8 folks who dealt with the installations and  
9 the removal of the equipment all reported up  
10 to you as well, right?

11 A. Well, they worked for a vendor  
12 that we -- we used third-party vendors. Or  
13 we used external vendors, but they  
14 reported -- Kimberly oversaw those vendors  
15 and she reported to me.

16 Q. Right. That was under your  
17 bailiwick --

18 A. Yeah, yep, yep, yep.

19 Q. To round out your resumé, what  
20 have you done since you left Healthy Advice  
21 by way of employment?

22 A. I worked for a brief period for  
23 a company in Maryland called Care Vision.

24 Q. What were you doing?

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33

1           A.       For three months. I was -- took  
2       a position as a chief operating officer, and  
3       as it turned out, the funds weren't in place  
4       as I had been led to believe, so I departed  
5       there.

6           Q.       Did you actually move out to  
7       Maryland?

8           A.       I did.

9           Q.       Your Linkedin page says that you  
10:18 10       currently live in Denver?

11          A.       Because I'm moving there as fast  
12       as I can.

13          Q.       Why is that?

14          A.       Because I like it.

15          Q.       Okay.

16          A.       My son's graduating high school,  
17       so I'm unencumbered shortly. I'm putting my  
18       house on the market.

19          Q.       And have you been employed since  
10:18 20       the employment you had with the company in  
21       Maryland?

22          A.       I have not.

23          Q.       In HAN's efforts to sign up  
24       physicians to its networks, it would try to

Jill Brewer, 3/25/2014

34

1 convince physicians who already had a POC  
2 provider to switch to HAN, correct?

3 A. No. We -- we were sort of --  
4 no. We didn't by and large target anybody  
5 with current products, I mean --

6 Q. I didn't mean it that way. Let  
7 me start over. If in the course of a sales  
8 effort HAN determined that the practice  
9 already had a POC provider, HAN would --

10:19 10 A. POC?

11 Q. Point of care.

12 A. So start over.

13 Q. Okay. If in the course of a  
14 sales effort to a practice HAN would learn  
15 that the practice already had a competitor in  
16 the waiting room, HAN wouldn't then cease all  
17 sales efforts, it would instead try to  
18 convince the practice of the merits of HAN's  
19 product over the competitor's, right?

10:19 20 MR. BERNAY: Object to the form.  
21 You can answer.

22 A. Yeah, I would say if we walked  
23 in and saw it on the wall, we would ask if  
24 they were satisfied with their service, and

Jill Brewer, 3/25/2014

35

1 if they were dissatisfied with their service,  
2 we would ask them if they were interested in  
3 a different product or service. But my  
4 recollection is that -- just like what  
5 happened at Whittle Communications, the  
6 original product -- and I will volunteer this  
7 insight. The original product that  
8 Context -- I think it's Context sits under,  
9 is actually a product that I built out  
10:20 10 originally, it was called Special Reports. So  
11 Special Reports was the first in office  
12 program and it was with Joan Lunden, and it  
13 had magazines, these huge, glossy magazines,  
14 you can still go in offices in Chicago and  
15 see big wooden oak cases. So when I say Chris  
16 Whittle founded it, we built the first  
17 network across the country. Just like we did  
18 in education, I did it originally at Whittle  
19 Communications there. Over time, that was  
10:20 20 sold to Time Warner and sold and sold, and I  
21 think it was -- what is that channel in  
22 Chicago, that channel, you know, whatever.  
23 But, anyway, that was the original special  
24 report platform. So Healthy Advice, by and

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Jill Brewer, 3/25/2014

36

1 large, it started dwindling because they  
2 didn't replace it, because there's a natural  
3 churn in these networks. By default, the  
4 practice, doctors die, they move, they close  
5 up shop, you know, they merge, they unmerge,  
6 so there's a natural churn due to, just like  
7 the homeowner's market. So when I came here,  
8 the network was tiny, so we built it out. So  
9 the bulk, 99 percent of this network, or  
10:21 10 99.9 percent was virgin, there was nothing  
11 there.

12 Q. When you say 99.9 percent --

13 A. I'm just saying there was --  
14 there was not a competitor out there. We grew  
15 the network without a competitor in place.

16 Q. What time period are you talking  
17 about when you say --

18 A. From the time I came there, '04.

19 Q. So from 1994 until --

10:21 20 A. No, I don't know what you mean  
21 by '94. I'm just saying, when I came to  
22 Healthy Advice, --

23 Q. 2004, oh, I'm sorry.

24 A. -- by and large. By and large,

Jill Brewer, 3/25/2014

37

1 when I came to Healthy Advice, there weren't  
2 competitors in the marketplace. It was  
3 virgin territory, we just expanded.

4 Q. Did that ever change, that it  
5 was virgin territory and there were no  
6 competitors in the market?

7 A. Well, what happens, you get  
8 saturated, so you have salespeople, so if you  
9 saturate a market, then you just -- you  
10:22 10 travel and you go to a market that's not --  
11 that doesn't have distribution, I guess, is  
12 one way to look at it.

13 Q. You said a couple times the  
14 market was saturated, that HAN had  
15 99.9 percent, what --

16 A. I don't mean 99, what I'm saying  
17 is that -- the 99 percent. I'm just saying  
18 the bulk of everything we did, did not -- it  
19 was -- there was not a product in place,  
10:22 20 like -- more like a bulk. So the majority of  
21 the network was built on virgin space.

22 Q. What I'm trying to find out is  
23 what network are you talking about when you  
24 keep saying --

Jill Brewer, 3/25/2014

38

1 A. Primary care.

2 Q. Okay.

3 A. All of them, every one of them.

4 Q. Did there ever come a time where  
5 HAN faced competition and would compete with  
6 market share with other competitors?

7 A. I would say that ACN is the only  
8 one that rings a bell.

9 Q. You know that ContextMedia took  
10:23 10 market share from HAN, right?

11 A. Took market share. I know that  
12 ContextMedia displaced HAN's placement.

13 Q. And did HAN ever switch a  
14 practice from ContextMedia service to HAN's  
15 service?

16 A. I don't recall winning that over  
17 in ACN. I mean, we had, what, 160 offices?

18 Q. How about in PCN?

19 A. I didn't even know they had a  
10:24 20 PCN product.

21 Q. So it's your recollection that  
22 the space where ContextMedia competed against  
23 HAN was in ACN?

24 A. That is my recollection.

Jill Brewer, 3/25/2014

39

1 Q. And you threw out a number of  
2 160 a moment ago, is that because, when you  
3 left, the size of HAN's ACN market was about  
4 160 doctors?

5 A. I'm guessing. Somewhere around  
6 there. It was tiny.

7 Q. Did you ever see projections  
8 within the company whereby the size of HAN's  
9 market in ACN would grow by 500 physicians in  
10 a single calendar year?

11 A. I ran that, so, no, I never saw  
12 that. I mean, that would be really hard to  
13 do.

14 Q. I mean, that's -- would be  
15 unrealistic, right?

16 A. Be unrealistic? It would be --  
17 500 doctors in one year?

18 Q. Right, in ACN.

19 A. In ACN, that would be hard to  
20 do. I'm sharing my opinion, I guess I'll shut  
21 up about that.

22 Q. What about the proposition that  
23 HAN would grow its ACN market by 500 doctors  
24 in 2012 and another 500 doctors in 2013?

Jill Brewer, 3/25/2014

40

1 MR. BERNAY: Object to the form.

2 You can answer.

3 A. I don't need to answer. I have  
4 no idea what happened. I mean, I don't know  
5 how the market's changed, it's been a long  
6 time. I would just say, at the time, I think  
7 we had about 160. I do know -- I will share  
8 that the market, the rheumatology market is  
9 going exponentially. Obviously, there's tons  
10:25 10 of money there and PhRMA is willing to pay a  
11 lot for it, and that's why so many people  
12 entered that field, I'm guessing, and so  
13 there were a lot of people interested, a lot  
14 of people charging a lot of money per doctor  
15 based on their product, and it's -- and also  
16 they -- I think I recall there was an influx  
17 of a lot of NPs and PAs who were going in  
18 that field that would allow a larger space,  
19 if I recall, because that's the problem. You  
10:26 20 can't get into these guys and everybody seems  
21 to need it. So with NPs and PAs expanding, I  
22 recall that that was growing exponentially,  
23 and so if they're going in that field, that  
24 would increase the market huge.

Jill Brewer, 3/25/2014

41

1                   So, again, that is what I recall  
2     that was trending. Because what they do,  
3     they charge -- there's a patient value, and a  
4     patient value on a drug in a rheumatology  
5     product is 20 -- I want to say is 20 times  
6     that or 100 times that. It's so much more  
7     than the patient value of an antibiotic or  
8     something. The patient value of those drugs  
9     are huge, and that's what drives this market.

10:26 10     So that I would say for -- and then, with all  
11     the growth and the high trends and NPs and  
12     PAs, with new government guidelines and  
13     ObamaCare, you know, it's very likely or  
14     possible that that market could be exploding.

15                 Q.     But that's your speculation  
16     right now, right?

17                   MR. BERNAY: Object to the form.  
18     You can answer.

10:27 19                 A.     No, I'm not saying that's my  
20     speculation. I'm saying, just like before,  
21     based on my experience and what I recall from  
22     knowledge and trends from the -- from the  
23     time I was there, the trends are what I just  
24     described, and that's what I recall. So I

Jill Brewer, 3/25/2014

42

1 wouldn't call it speculation. I would say my  
2 recollection of the trends and the growth in  
3 those networks and how that growth could be  
4 allowed for or accommodated for.

5 Q. Well, let's talk about trends  
6 while you were there. From the time you  
7 started in 2004 to the time you left in 2012,  
8 didn't the size of HAN's ACN market hover  
9 around that 160 number you gave me a moment  
10 ago?

11 MR. BERNAY: Object to the form.  
12 You can answer.

13 A. No. It grew, we grew it. We grew  
14 our last year, and when I say that 160, that  
15 would have been before. Because my last  
16 year, it was -- they were looking to grow,  
17 because -- and you probably know Linda  
18 Ruschau, who's the client that was behind the  
19 product, she -- because there was so much  
20 interest and because of the patient value,  
21 everybody was interested in the growth of  
22 this network. So I'm not saying that hovered,  
23 but I'm saying it was a focus of the company  
24 for growth. That's what I recall when I

Jill Brewer, 3/25/2014

43

1 left.

2 Q. I guess what I was trying to ask  
3 you, from 2004 to 2012, didn't the size of  
4 HAN's ACN market consistently stay around  
5 160?

6 A. Yes, during that time that --  
7 I'm not sure how ContextMedia is funded,  
8 Healthy Advice is funded by the number of  
9 doctors in the network, and so you managed to  
10:29 10 that. So -- meaning that if -- if you're  
11 selling the space, and let's say you're  
12 selling 100, and if I sell 101 doctors, I  
13 don't get paid for that extra doctor, I only  
14 get paid for the hundred. So the objective  
15 is to stay what your target is. That is the  
16 objective. And so I did a good job of  
17 keeping it on track. As I say, arrived on  
18 time and on budget.

19 Q. Okay. When a practice notified  
10:29 20 HAN that it was leaving HAN --

21 A. Em-hm.

22 Q. -- your team were to contact the  
23 practice and try to understand the reasons  
24 the practice was leaving HAN, right?

Jill Brewer, 3/25/2014

44

1           A.     No.   If they called us, we asked  
2     them.   We didn't have to contact them, they  
3     called us.   So we would ask them on the phone  
4     why they called, because they do -- they call  
5     you.   We would go why, we document it in the  
6     files and stuff, like why are you leaving and  
7     anything we can do.

8           Q.     Right.   Well, I wasn't focused  
9     on who called who.   Whether you called them  
10    or they called you --

11          A.     Okay.

12          Q.     -- you had folks on your team  
13     whose job responsibilities included trying to  
14     understand why the practice had made the  
15     decision to leave HAN, right?

16          A.     Any time a practice contacted  
17     us, we have reason codes as to why they were  
18     departing, and we would ask, why you're  
19     departing, just like if you're cancelling a  
20     credit card or anything else, they ask you  
21     why you want to leave, and you tell them. We  
22     did the same thing, and we would document why  
23     they were departing.   So, yes, if they called  
24     us and wanted to cancel, we said why are you

Jill Brewer, 3/25/2014

45

1 cancelling, and we would document the reason  
2 code.

3 Q. And when you say reason code,  
4 can you tell me what you're talking about?

5 A. Well, are you leaving because  
6 your practice is closing, are you leaving due  
7 to a competitor, are you leaving due to  
8 you're moving, are you -- you know, why are  
9 you leaving our network so that we can better  
10:31 10 understand and better serve you.

11 Q. Were each of those reasons under  
12 this reason code system assigned a number or  
13 a letter from the alphabet or something  
14 else --

15 A. I don't remember.

16 Q. -- associated a particular code?

17 A. I don't remember. Maybe it just  
18 went into comments, I really don't recall.

19 Q. When you say it went into  
10:31 20 comments, you're talking about the CMS  
21 database, right?

22 A. Yeah. But I don't recall, I  
23 just know that there was a documentation that  
24 would say why are you departing and why you

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Jill Brewer, 3/25/2014

46

1     were departing, it would document why you are  
2     departing so we would know the reason of --  
3     just like any company would do. So I'm sure  
4     there was like a code or something. It would  
5     be silly not to have one.

6             Q.     Why was it important to HAN to  
7     know the reasons a practice was leaving?

8             A.     Same reason it's important for  
9     American Express to know why you don't want  
10    their card anymore. It's to understand the  
11    marketplace so you can improve your product  
12    or service. If they're dissatisfied with  
13    your content and you want to understand it so  
14    you can improve the content. If they're  
15    dissatisfied somebody was rude on the phone  
16    or somebody didn't return a call or, you  
17    know, it's elementary business.

18            Q.     And I apologize, again, if my  
19    questions seem --

20            A.     I know, I'm just thinking it's  
21    so common, but that's why. So you can provide  
22    better service. I'll try not to be so windy.

23            Q.     At one point in time, do you  
24    recall -- well, let me back up. These folks

Jill Brewer, 3/25/2014

47

1 who would try to understand and document a  
2 reasons -- the reasons a practice was leaving  
3 HAN, they reported up to Ms. Finley, who in  
4 turn reported up to you, right?

5 A. Correct.

6 Q. Do you recall all of the fields  
7 that were in the CMS database with respect to  
8 keeping track of information regarding  
9 practices?

10:33 10 A. I don't recall all of them, and  
11 they didn't always report to Amy. For a long  
12 time, the majority of this time, Amy just had  
13 responsibility for the -- for the -- Amy only  
14 had this responsibility for the last couple  
15 of years, I don't even know how long, but  
16 maybe two years. Before that, other people  
17 had this responsibility. So Amy only was  
18 just responsible, she was my assistant in the  
19 sales recruitment and then she saw -- she  
10:33 20 oversaw the people who did the onboarding,  
21 and then for a while there's a woman by the  
22 name of Kelly Nugent who led that team. And  
23 Kelly Nugent is the one who established all  
24 the protocols and all that stuff. So I

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Jill Brewer, 3/25/2014

48

1 don't -- I know we had a lot. We had  
2 probably -- because we wanted to understand  
3 it, so we -- I'd be guessing, but a lot of  
4 reason codes.

5 Q. Okay. And how would someone who  
6 was trying to assign the reason a practice  
7 had left or was leaving HAN to a reason code,  
8 how would they know what the available reason  
9 codes were? Was there a sheet of paper that  
10:34 10 said here's the reason --

11 A. It's embedded in CMS, so they  
12 would -- so I'm talking to you on the phone,  
13 I have my computer in front of me and I click  
14 a box, so it's not manual, it's electronic.

15 Q. I see. And do you recall what  
16 other fields were in the CMS database? And  
17 let me give you an example. Was there a  
18 field in there for noting whether or not you  
19 were able to save a practice? Do you know  
10:34 20 what I mean by save a practice? There's two  
21 questions --

22 A. I'm not aware of that at all.

23 Q. Okay.

24 A. Because these people aren't paid

Jill Brewer, 3/25/2014

49

1 for -- at the time. I do not recall these  
2 people, that they were paid in any capacity  
3 for "saving". I don't recall that.

4 Q. Let me start over. Do you  
5 know -- do you understand what I'm talking  
6 about when I say save a --

7 A. Yeah, and I'm saying --  
8 (Interruption by Reporter.)

9 Q. You have to let me, just talk  
10 one at a time, otherwise she'll never be able  
11 to get it down. So let me start over.

12 Do you know what I mean by save  
13 a practice?

14 A. No. Why don't you explain that.

15 Q. A practice has notified HAN that  
16 it's going to a competitor. One of the folks  
17 that report up to you is on the phone trying  
18 to understand the reasons why. Does that  
19 person also then try to save the practice and  
20 convince the practice of the merits of HAN's  
21 content, for example, so that the practice  
22 will consider staying with HAN?

23 A. I apologize, but I thought I  
24 answered that already. Previously we said,

Jill Brewer, 3/25/2014

50

1 when a practice calls in to cancel, because  
2 they always call, that I recall, then we  
3 would say, why -- we would try to convince  
4 them not to leave.

5 Q. Okay.

6 A. Because it's very expensive when  
7 they leave.

8 Q. I'm sorry if I didn't catch  
9 that --

10:36 10 A. No, it's okay, but, yeah, that  
11 would be, yeah.

12 Q. So if the person then was  
13 successful in what I'm calling saving the  
14 practice, and they say okay, all right, I'll  
15 stay with you. Is that noted in the CMS  
16 database?

17 A. Not -- I have no idea. I don't  
18 recall that it was, but I cannot say.

19 Q. Okay. How about the status of  
10:36 20 the equipment with respect to a practice who  
21 leaves HAN, is that a field in the database?

22 A. They have tremendous tracking.  
23 Yeah, tremendous.

24 Q. So the database would note

Jill Brewer, 3/25/2014

51

1 whether or not the equipment had come back or  
2 not, right?

3 A. Oh, yeah. And those -- it knows  
4 where it is in transports, it knows  
5 everything. It knows every device on it,  
6 yeah, that's pretty sophisticated.

7 Q. Were you aware of instances from  
8 time to time where someone on your team  
9 advised a practice that they didn't need to  
10:37 10 return the equipment, they could just keep  
11 it?

12 A. I'm not aware.

13 Q. Do you know if that ever  
14 happened?

15 A. I'm sure -- like what kind of  
16 equipment?

17 Q. The player and the screen.

18 A. No, I'm not aware of that ever.

19 Q. Okay.

10:37 20 A. What I'm aware of is if we spent  
21 the money which turned out not to be  
22 effective at all to run cable, the only thing  
23 we left at the practice, you running cable  
24 like through the walls and all this, which is

Jill Brewer, 3/25/2014

52

1 extremity expensive, we have left that, I'm  
2 aware of that. I'm aware of the products that  
3 were in exam rooms, like they -- Healthy  
4 Advice bought some company that I don't --  
5 some company that had stuff in exam rooms,  
6 that stuff we didn't want back, and we tried,  
7 oh, take it home, and because it was -- but  
8 that was in exam rooms, it wasn't being used  
9 for the network, it was just in there, so we  
10:38 10 were hoping we didn't have to go pick it up.  
11 That's the exam room. But never, I do not  
12 recall ever in the waiting room saying, keep  
13 it. It's too expensive.

14 Q. And that's the reason you  
15 believe it didn't happen, because the  
16 equipment is expensive?

17 A. No. I just --

18 MR. BERNAY: Object to the form  
19 of that question. You can answer.

10:38 20 A. Yeah, so say that again.

21 Q. Is that the reason you're saying  
22 you don't believe a practice was ever allowed  
23 to keep, for example, the player, because  
24 it's too expensive?

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Jill Brewer, 3/25/2014

53

1 MR. BERNAY: Objection.

2 A. No, it's a -- it's against the  
3 rules, it's against the law, like, that's not  
4 our agreement. The agreement is, you can't.  
5 You can't because PhRMA pays us, and if we  
6 did that, it would be a gift to the practice,  
7 so you can't. There's a lot of reasons you  
8 can't, but you can't.

9 Q. What if the equipment was  
10 antiquated?

11 MR. BERNAY: Object to the form.

12 A. I just mentioned in the -- I  
13 don't know the details of this, but that  
14 stuff in the exam room, I did. I even looked  
15 at trying to buy remotes to give to them,  
16 because it wasn't being used in an  
17 advertising format. So as long as it's not  
18 being used as a medium. Meaning, I think  
19 what I'm trying to say, if it's been written  
20 off because it's so old. But, no, I'm not  
21 aware of that ever.

22 Q. Okay. At what point in time do  
23 you recall -- let me back up. I asked you a  
24 question a moment ago about whether the folks

Jill Brewer, 3/25/2014

54

1 who were responsible for trying to understand  
2 the reasons a practice left HAN reported up  
3 to Ms. Finley. And you said she only had that  
4 role the last couple of years you were there,  
5 and before that, others had that role, right?

6 A. Yeah.

7 Q. And so the years that Ms. Finley  
8 would have had that role would have been the  
9 2010-2012 time frame?

10:40 10 A. Yeah, and, again, I don't  
11 remember exactly. But Kelly -- maybe even  
12 before that, but Kelly Nugent is the person  
13 who -- and she only worked there a year, so  
14 not very long. But she's the one who did the  
15 original manuals. But then -- and then  
16 before that, it was in another department, so  
17 it's kind of -- but for the reason codes, I  
18 would say the current reason codes, and the  
19 reason codes upon my departure, Amy would  
10:40 20 have had set those up.

21 Q. Yeah.

22 A. And she had all of that.

23 Q. And I'm really only interested,  
24 today, for the most part, unless I tell you

Jill Brewer, 3/25/2014

55

1 otherwise, in the 2010-2012 time frame.

2 A. Okay. So, yes, Amy would have  
3 established all those reason codes.

4 Q. Do you recall at one point in  
5 time going to the same -- I was going to say  
6 Amy, let me start over. Do you recall at one  
7 point in time going to Ms. Finley and saying  
8 that you wanted her team to create a separate  
9 spreadsheet to track switches away from HAN  
10 to ContextMedia?

11 MR. BERNAY: And let me advise  
12 you just at this moment not to, again, as we  
13 discussed off the record, not to disclose the  
14 contents of your conversations with counsel  
15 during the time you were at Healthy Advice.

16 Q. The question I asked was a yes  
17 or no question. I'll ask it again. Do you  
18 recall at one point in time going to Ms.  
19 Finley and instructing her to create a  
20 separate spreadsheet that would track  
21 switches from HAN to ContextMedia only?

22 A. I do not. All of this  
23 information is stored in CMS so it would have  
24 been stored in CMS. There would be no reason

Jill Brewer, 3/25/2014

56

1 to have it separate. I mean, I'm just saying,  
2 I think, to me, CMS was quite elaborate and  
3 I -- it is my belief that, if it was in CMS,  
4 that we could track all of that.

5 Q. I'll represent to you Ms. Finley  
6 testified that you did do that.

7 A. Okay. Then I did, but I just  
8 don't recall that.

9 Q. So I take it you have no  
10:42 10 recollection of the reasons you asked her to  
11 do that?

12 MR. BERNAY: Objection.

13 A. I have no -- if I don't recall  
14 specifically doing that, other than being  
15 able to track and understand what's going on  
16 specifically, what's going on, I would've  
17 think that, instead of having that in a  
18 separate spreadsheet, I would think, not that  
19 I didn't, but I would think it would be in  
10:42 20 CMS and you can extract anything out of CMS.

21 Q. It's a pretty robust database,  
22 isn't it?

23 A. It's hand grown. It's got a lot  
24 of stuff, it doesn't function great, sorry,

Jill Brewer, 3/25/2014

57

1 Cathy, but it's got a lot of stuff. I mean,  
2 we tracked everything. Everything was  
3 tracked, everything. So I can't imagine you  
4 would need -- not that you couldn't because  
5 you could run it out of CMS and you would  
6 have it. So I don't know why it would be  
7 separate. There would be no special reason  
8 for that.

9 Q. So I take it you also don't  
10 recall any lawyer for HAN instructing you to  
11 have your team create such a separate  
12 database --

13 A. I definitely do not remember  
14 that.

15 Q. Okay.

16 A. I wanted to be aggressive and  
17 they didn't.

18 Q. Okay.

19 A. And I can assure you, not only  
20 do I not remember, I know for certain that  
21 never occurred. I don't recall.

22 Q. That is, it never occurred that  
23 a lawyer instructed you --

24 A. No --

Jill Brewer, 3/25/2014

58

1 (Interruption by Reporter.)

2 Q. Let me finish my question,  
3 please.

4 A. Oh, sorry.

5 Q. It never occurred that a lawyer  
6 instructed you to create such a separate  
7 spreadsheet?

8 A. No.

10:43

9 Q. Now I'm going to show you some  
10 documents.

11 A. Okay.

12 Q. That's part of this process,  
13 too.

14 A. That's okay.

15 Q. I'm now going to show you what  
16 was previously marked as Defendant's  
17 Exhibit 19. And with all of these, Ms.

18 Brewer, you take whatever time you want to  
19 look at this before you answer any questions

10:44

20 I have for you. When you are ready to answer  
21 a question, though, the first one I'll have  
22 for you is if you recall this e-mail chain.

23 (Exhibit 19 identified.)

24 A. Okay, so. Okay, so.

Jill Brewer, 3/25/2014

59

1 Q. The first question was, do you  
2 recall this e-mail chain?

3 A. Do I recall it? Is it -- this is  
4 a chain, so this is October 14, 2011, 4:49.  
5 So FYI, so Cathy Goold, Cathy Goold sent this  
6 to Scott Landon, and Scott sent it to Lance  
7 and Todd -- who's Todd Glass? Who's Todd  
8 Glass?

10:45

9 Q. I have no idea. The way I read  
10 this, Ms. Brewer, it starts off with an  
11 e-mail from Amanda Devlin to you, Ms.  
12 Grippo --

13 A. I'm back there --

14 (Reading to herself out loud.)

15 Says he switches out Accent  
16 Health -- Accent Health. Accent Health was  
17 the former thing that I did. Well, it's here,  
18 so I guess so, but.

10:46

19 Q. Well, let me ask you some  
20 questions --

21 A. Okay. Ask me about it, go ahead.

22 Q. First of all, do you recall  
23 that -- do you recall Amanda Devlin?

24 A. Pardon?

Jill Brewer, 3/25/2014

60

1 Q. Do you recall Amanda Devlin?

2 A. Oh, yes, I did.

3 Q. Did she report up to you?

4 A. She did. She reported to me.

5 Q. And do you recall that, during  
6 this time period, that she was gathering  
7 competitive intelligence about ContextMedia?

8 A. That she -- well, clearly I was.

9 Q. Okay. So, for example, she was  
10:47 10 speaking to people from ContextMedia, right?

11 A. She spoke -- I guess she  
12 communicated through this e-mail. I guess  
13 she called them.

14 Q. Right. And did you know when she  
15 did that she lied to the fellow from  
16 ContextMedia and said that she was from a  
17 practice interested in ContextMedia's  
18 service?

19 MR. BERNAY: Objection. You can  
10:47 20 answer.

21 A. Well, she -- I clearly learned  
22 after the fact.

23 Q. Is that something you approved  
24 of before the fact?

Jill Brewer, 3/25/2014

61

1           A.     No. I didn't know she was -- to  
2     the best of my knowledge, no, I did not know  
3     she was doing it.

4           Q.     Do you know who did approve that  
5     before the fact?

6           A.     I don't know that anyone did. I  
7     think she probably just did it.

8           Q.     And had she come to you before  
9     the fact and asked your permission to do  
10    that, what would you have told her?

11          A.     I'm not sure.

12                 MR. BERNAY: Objection. Object to  
13    the form. You can answer.

14          Q.     Once you did find out, did you  
15    or anybody else in management reprimand or  
16    admonish her for that?

17          A.     No, I did not.

18          Q.     As you sit here today, do you  
19    think that what she did was unethical?

20          A.     To call --

21                 MR. BERNAY: Objection. You can  
22    answer.

23          A.     -- a competitor. You know,  
24    it's -- that's a moral question, so what I

Jill Brewer, 3/25/2014

62

1 think, I don't know.

2 Q. Okay. Did you feel like you  
3 understood what appropriate business ethics  
4 were when you were working at Healthy Advice?

5 A. Did I feel like I understood?

6 Q. Right.

7 MR. BERNAY: Object to the form.

8 A. I understand business practice.  
9 So you said appropriate?

10:49 10 Q. Did you have an understanding of  
11 that -- a framework that you worked under  
12 when you were at Healthy Advice as to what  
13 would be an ethical business practice and  
14 what would be an unethical business practice?

15 MR. BERNAY: Object to the form.

16 A. I tried my best to create an  
17 ethical business practice.

18 Q. And would part of that effort be  
19 to approve or disapprove of someone on your  
10:49 20 team misrepresenting themselves to a  
21 competitor as someone from a practice in  
22 order to gain information about the  
23 competitor?

24 A. I -- repeat that.

Jill Brewer, 3/25/2014

63

1 MR. O'BRIEN: Could you read it  
2 back, please.

3 (Record read by Reporter.)

4 MR. BERNAY: Object to the form.  
5 You can answer it.

6 A. So repeat my understanding of  
7 the question. Is that, basically, do I think  
8 what Amanda did was okay and ethical? And  
9 so, specifically, do I find it inappropriate  
10:50 10 or poor business practice to call a  
11 competitor and ask questions regarding a  
12 product in order to gain information. I would  
13 say that's probably standard business  
14 practice across the country. I'd say it's  
15 standard. It happened to us. So I'd say  
16 standard.

17 Q. The part you left out, though,  
18 when you rephrased my question was, Ms.  
19 Devlin didn't simply call a competitor and  
10:50 20 asked for information. She called the  
21 competitor and falsely represented herself as  
22 being from a practice who was interested --

23 A. I understand. That's standard  
24 business practice.

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Jill Brewer, 3/25/2014

64

1 Q. Okay. Now, if you look at the  
2 first page of this e-mail chain, you've got  
3 an e-mail dated October 14th to Mr. Campbell,  
4 Ms. Shattles --

5 A. Em-hm.

6 Q. -- Mr. McAllister, Ms. Goold,  
7 Ms. Phillips and you cc'd Ms. Theiss, right?

8 A. Yeah.

9 Q. At the time, Mr. Campbell, what  
10:51 10 position did he hold?

11 A. The only really he ever held  
12 there, the same one he held when he departed,  
13 in charge of programming.

14 Q. Well, no, at the time he  
15 departed, he was the COO. That happened after  
16 you left?

17 A. Okay. So he was -- he did the  
18 same job.

19 Q. And Ms. Shattles, what was her  
10:51 20 position?

21 A. She led the editorial team.

22 Q. Content or something?

23 A. Yeah.

24 Q. And then Ms. -- Mr. McAllister.

Jill Brewer, 3/25/2014

65

1 A. He was COO.

2 Q. Ms. Goold?

3 A. She's head of IT.

4 Q. IT?

5 A. IT.

6 Q. Oh, information technology?

7 A. Yes.

8 Q. And then Ms. Phillips?

9 A. She worked for Tom.

10:52 10 Q. Okay. And then in the second  
11 sentence of your e-mail, you said, "With that  
12 said, they were clearly capitalizing on our  
13 practice's service concerns, specifically our  
14 connectivity issues," do you see that?

15 A. Em-hm.

16 Q. And then you go on to say,  
17 "almost all the offices they've been able to  
18 convert have a record of one or more service  
19 issues," do you see that?

10:52 20 A. Em-hm.

21 Q. And you wouldn't have said that  
22 at the time unless you believed it to be  
23 true, right?

24 MR. BERNAY: Objection.

Jill Brewer, 3/25/2014

66

1           A.       No, that's not true. I wanted  
2       them, if you read the remainder, I wanted  
3       them, "By the end of 2011, we have around --"

4                       (Interruption by Reporter.)

5           A.       So the point is, I was trying to  
6       sell a different install. I was trying to  
7       sell -- I was trying to sell my cause, that I  
8       wanted to do a different type of install.

9           Q.       So because you were making a  
10       sales pitch, it was, in your judgment,  
11       appropriate to exaggerate or engage in  
12       hyperbole; is that fair?

13           A.       It's -- it was, in my view --  
14       no, that's not fair. I wanted to promote --  
15       there's nothing I said here that isn't true.  
16       When I say almost all, that probably is an  
17       exaggeration, but I would say that I'm  
18       highlighting what's most important. What's  
19       most important as the person responsible for  
20       the servicing of these practices. So if you  
21       move over, how much it's going to cost,  
22       800,000 just to manage the phone charges, I  
23       was trying to say that, let's do it by  
24       sharing, because we used faxes, let's do it

Jill Brewer, 3/25/2014

67

1 by sharing their network. That was the  
2 objective of this right here.

3 Q. Sharing their network, what do  
4 you mean by that?

5 A. The Internet connection of a  
6 practice.

7 Q. So --

8 A. As opposed to putting in a  
9 phone/fax and running all that cable that's  
10 costing \$1 million a year.

11 Q. So you're trying to make the  
12 point to senior management that we should be  
13 moving toward a delivery model that shared an  
14 Internet connection versus these fax  
15 connections, right?

16 A. Correct.

17 Q. And is part of your point that  
18 with the fax connection, there are  
19 connectivity and then resulting service  
20 issues?

21 A. Correct.

22 Q. And you understood at the time  
23 that there were a lot of service issues with  
24 practices around connectivity due to the fax

Jill Brewer, 3/25/2014

68

1 line, right?

2 A. Yes.

3 Q. Okay.

4 A. You know, I'm going to back that

5 up. Our number one, and it probably says it

6 in here, so we've lost all of our sales, when

7 I started investigating, was due to service

8 issues. When you talked earlier about do we

9 track codes, yes, we do, and this is why you

10:55 10 track codes, right? Because it costs you a

11 lot of money to acquire the practice, and

12 then when you -- just like in any business,

13 it's -- when you have to recruit another

14 practice, there's costs involved there. So

15 that's understanding your service,

16 understanding your business, this is very

17 important. So, "This is classic, you wait

18 until your competitor trips up," e.g., we

19 tripped up and then someone else steps in,

10:55 20 and that's what happens in every business.

21 And I am saying we must explore more modern

22 options, it's increasing our competitive

23 risk. And also in the beginning, the reason

24 they did it the other way is because

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Jill Brewer, 3/25/2014

69

1 practices didn't understand the Internet and  
2 they weren't comfortable sharing, and I'm  
3 saying they are now comfortable sharing. So  
4 the objective of this was to say too, we need  
5 to move forward.

6 Q. This e-mail is about  
7 ContextMedia, right?

8 A. No. This -- my purpose here is  
9 about the -- my content here is specifically  
10:56 10 about changing our delivery model.

11 Q. Right. But go to the first page  
12 again, the paragraph ahead, you focus on --

13 A. I understand. People passed it  
14 around, but I'm saying, my particular  
15 content, what I wrote right here, is about a  
16 different delivery model.

17 Q. Let me finish my question.

18 A. Okay.

19 Q. You write, "That said, they are  
10:56 20 clearly capitalizing," isn't the they in your  
21 sentence ContextMedia?

22 A. It's only because it was in the  
23 context of this e-mail, because it initiated  
24 here. So only because of that. This is an

Jill Brewer, 3/25/2014

70

1 example of, if you think about it, what,  
2 Healthy Advice has, what, 25,000 primary care  
3 offices, we had 160 of these. The impact,  
4 like I'm not going to save \$1 million a year  
5 on ACN, I'm talking about this savings from  
6 the entire network. So this is just an  
7 example of how this impacts the entire  
8 company as opposed to this tiny network.

9 Q. I understand. But the they in  
10:57 10 that sentence was ContextMedia, right?

11 A. They in that sentence is  
12 ContextMedia, but this is an example --

13 Q. I understand.

14 A. -- of the whole impact. So they  
15 are just really an aside.

16 Q. I understand. And in the next  
17 sentence when you say, "Almost all the  
18 offices they've been able to convert have a  
19 record of one or more service issues," the  
10:57 20 they there is also ContextMedia, right?

21 A. Yeah, because attachments and  
22 cc, it says RHN. So, specifically, it would  
23 be sort of confusing to talk about anything  
24 other than what the e-mail context is.

Jill Brewer, 3/25/2014

71

1 Q. I understand. And it's your  
2 testimony, though, when you say, "Almost all  
3 the offices," that was a bit of an  
4 exaggeration or was that your belief at the  
5 time?

6 A. I'm -- that's -- I'm sure I  
7 probably exaggerated.

8 Q. Okay.

9 A. I'm guessing, because it sounds  
10:58 10 like a sales pitch to me.

11 Q. And it's not uncommon when  
12 making a sales pitch to engage, salespeople  
13 do it all the time, a little bit of  
14 exaggeration or hyperbole, right?

15 A. Well, yeah, I guess, I hear  
16 when -- well, this is internal, that's  
17 different. When you're talking to a  
18 practice, an external customer, I feel it's  
19 very, very important to be earnest. So I'm  
10:58 20 selling this to my executive team, Mike  
21 McAllister, and I'm trying to get these  
22 people on page, and get IT to believe in  
23 this. So internal practices, I think, are  
24 very different than external customers.

Jill Brewer, 3/25/2014

72

1 Q. Okay.

2 MR. BERNAY: We've been going for  
3 a while. You want to take a break?

4 MR. O'BRIEN: Sure.

5 MR. JAHN: We're off the record.

6 (Break taken.)

7 MR. JAHN: We're on the record.

8 Q. Ms. Brewer, I'm now going to  
9 hand to you what was previously marked as  
10 Defendant's Exhibit 24. Now, there's no  
11 indication that you received this. But I  
12 would like you to look at it, and I've got a  
13 question or two for you.

14 (Exhibit 24 identified.)

15 A. Okay.

16 Q. Do you know from your experience  
17 at HAN that this e-mail is repeating a  
18 comment from the CMS database?

19 A. What did you say?

20 Q. Does this appear, this e-mail,  
21 to include a comment from the CMS database?

22 A. It says comment, so.

23 Q. But you don't recognize from the  
24 format of this as being a comment that was

Jill Brewer, 3/25/2014

73

1 pulled from the CMS database?

2 A. It says comment type, so that  
3 would tell you it came from CMS.

4 Q. Okay. That's what I'm asking.

5 A. Yeah, I mean. That's what I  
6 tried to explain earlier. Comment type,  
7 comment. So I would assume it came from CMS,  
8 which is why I -- yeah.

9 Q. Do you recall -- well, as I  
10 said, you're not on this, but do you recall  
11 in this time frame, September 2011, it being  
12 reported up to you that practices were  
13 switching from HAN to ContextMedia because  
14 the practice found the program more engaging?

15 A. No. We debated and discussed  
16 that a million times. You're going to have --  
17 like, in this case, what this says, is that  
18 this was installed before the manager was  
19 there. So in this case, the person we sold  
20 the product in to felt that the way we sold  
21 it in -- is that the content was educational  
22 in scope, so, yes. So the new manager wanted  
23 a different product, the new manager. But  
24 the old manager was happy with the focus on

Jill Brewer, 3/25/2014

74

1 educational content. And we debated this a  
2 lot, and just like in any product, there are  
3 oranges and apples, why are there X-number of  
4 phones with different widgets and we elected,  
5 even though -- if you would look through,  
6 you'd see this debated, as to the reasons  
7 codes were lost, but you can see that it's  
8 really this reason code is tiny compared to  
9 moving, died, or any other reason.

11:08 10 Q. So --

11 A. So there's always going to be  
12 somebody who wants something different. In  
13 this case, it was a new manager who didn't.

14 Q. So a change in office personnel  
15 could be -- was one of the reasons HAN would  
16 lose a practice from time to time, right?

17 A. Change in personnel or -- well,  
18 that's what this e-mail says, yes.

11:09 19 Q. And you said that you debated it  
20 a lot. When you say you debated it a lot, was  
21 that internal discussions within HAN upon  
22 hearing that some practices were switching to  
23 ContextMedia for reasons like sound and news  
24 ticker, things like that? With that

Jill Brewer, 3/25/2014

75

1 information in hand, was the debate whether  
2 or not HAN should move away from its model,  
3 the apples, if you will, towards something  
4 more like the oranges?

5 MR. BERNAY: Object to the form.

6 A. I would say if -- with Amy, when  
7 I showed her the statistics of -- of the  
8 percent this really represented, which is  
9 nominal, correct? And then what was debated  
10 is that, if I recall, is that the  
11 pharmaceutical salespeople wanted to promote,  
12 so it's really to promote the drug, they  
13 wanted to be able to put sound to make it  
14 easy for them to sell it to PhRMA, it wasn't  
15 necessarily something, it's my belief at the  
16 time, and the study showed that the practices  
17 preferred a silent network. But the  
18 pharmaceutical salesperson, because they  
19 would get asked for it from the  
20 pharmaceutical side to get their product  
21 sold.

22 In other words, I'm going to  
23 watch educational content, but I'm not going  
24 to watch an ad necessarily. So they were

Jill Brewer, 3/25/2014

76

1     trying to make their ad more valuable. Does  
2     that make sense?

3             Q.     Yeah. It sounds like there was  
4     pressure from the side of the business that  
5     sold PhRMA to add sound?

6             MR. BERNAY: Objection.

7             A.     I wouldn't say there was  
8     pressure, I disagree. I would say that they  
9     would think that would make their job easier.

11:11 10            Q.     Whose job easier?

11            A.     The pharmaceutical salesperson.

12            Q.     At the advertiser or at Healthy  
13     Advice?

14            A.     The advertiser.

15            Q.     And didn't HAN ultimately  
16     include sound?

17            A.     I do not recall. We had sound  
18     while I was there.

11:11 19            Q.     And I think you said that what  
20     you told Amy was, and you showed her  
21     statistics, that the percentage of practices  
22     that HAN would lose to someone like  
23     ContextMedia because the practice liked the  
24     content that was different from HAN was small

Jill Brewer, 3/25/2014

77

1 compared to the reason -- the other reasons  
2 HAN experienced churn, such as a practice  
3 retiring or doctor dying, that kind of thing?

4 MR. BERNAY: Object to the form.

5 A. Correct. No. What you just  
6 said, I will say that what I showed Amy was  
7 the number of practices who chose to  
8 discontinue service with us because they  
9 wanted entertainment, which is what I'm  
10 reading here, sound, or news ticker or that  
11 entertainment is nominal, tiny relative to  
12 the other -- any other reason code. That  
13 would be what I recall.

14 (Exhibit 34 identified.)

15 Q. Okay. Let me show you what was  
16 previously marked as Defendant's Exhibit 34.  
17 This is another e-mail chain with respect to  
18 Ms. Devlin's activities, interacting with  
19 ContextMedia to obtain competitive  
20 information about ContextMedia, right?

21 MR. BERNAY: Take your time to  
22 review the document.

23 Q. Absolutely.

24 A. It appears to be one and the

Jill Brewer, 3/25/2014

78

1 same event.

2 Q. Em-hm.

3 A. It appears to be one and the  
4 same event.

5 Q. Well, there's -- there's loops  
6 now attached regarding recipes and physical  
7 activities and personal story examples,  
8 right?

9 A. Pardon?

11:13 10 Q. You don't understand those http  
11 links to be links to ContextMedia content?

12 A. I never went there. Was this  
13 sent to me?

14 Q. Yes, it was.

15 A. Yeah, I never went and looked at  
16 it.

17 Q. What did you --

18 A. But, you know, it really  
19 wouldn't matter because we see it -- we would  
11:14 20 have -- we saw it in the office. I mean,  
21 we'd sit there and watch it.

22 Q. There's nothing proprietary  
23 about ContextMedia's content, right?

24 A. There's nothing --

Jill Brewer, 3/25/2014

79

1 MR. BERNAY: Object to the form.

2 A. No, I'm not saying that. I'm  
3 saying that, if you're in a public space, if  
4 you're in a public -- if I'm in an office,  
5 just like people did with us, they would come  
6 in, sit down and watch our program. And so if  
7 it's -- if the content is playing in a public  
8 space, then anyone can be watching it.

9 Q. But this content is not playing  
10 in a public space when management at HAN is  
11 looking at it. It's a link that Ms. Devlin  
12 got from --

13 A. Is it the content that was  
14 played in a public space?

15 Q. It may have been, but.

16 A. I have no idea. I never clicked  
17 on it, so because I never clicked on it. So I  
18 don't know, but I'm assuming that this is  
19 personal -- that they took clips or excerpts  
20 from their content and sent this to people  
21 who inquire as examples of what they do. So I  
22 would assume that this is played on their  
23 networks in the offices is what I assume. I  
24 never clicked on them.

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80

1 Q. Did you know Ms. Devlin and Mr.  
2 Zmick of ContextMedia communicated back and  
3 forth over a several week period exchanging  
4 information?

5 A. I guess you can tell me if I  
6 knew because I don't remember that, but I got  
7 an e-mail that says I did, so I guess I did.  
8 I don't recall it. I don't recall it.

9 Q. So you don't recall e-mails at  
10 Ms. Devlin's urging where ContextMedia kept  
11 giving her more information about their  
12 product and content, you don't remember that?

13 MR. BERNAY: Objection.

14 A. I do not, and I don't -- I don't  
15 recall that.

16 Q. Do you recall reading these  
17 e-mails and noting that ContextMedia was  
18 trying hard to sell Ms. Devlin on the merits  
19 of the ContextMedia product and content?

11:16 20 A. I don't recall the exchange  
21 you're talking about, so if you've got one,  
22 show it to me and I can help you more.

23 Q. Well, do you recall --

24 A. Do you have a copy of something?

Jill Brewer, 3/25/2014

81

1 Q. I'm showing you two, and I'm  
2 going to show you another. They're all the  
3 same thing.

4 A. Okay.

5 Q. Do you recall Mr. Zmick of  
6 ContextMedia ever being deceptive or saying  
7 anything false and misleading on Ms. Devlin  
8 in trying to sell the ContextMedia product?

9 A. I don't recall the whole  
10 experience, I wouldn't recall those  
11 specifics. But if you have something to  
12 jog -- I mean, this is 2011, '12, '13, three  
13 years now, so I don't recall much of  
14 anything.

15 Q. Well, I'm trying to do the best  
16 I can.

17 A. Thank you so much.

18 (Exhibit 35 identified.)

19 Q. I'm now showing you Defendant's  
20 Exhibit 35. There's another e-mail exchange,  
21 and now we're a couple weeks later now.

22 A. Yeah, let me -- since this is  
23 important for you. "We will coordinate the  
24 installation with you upon it's removal,

Jill Brewer, 3/25/2014

82

1 Accent Health," that's that one. So now is  
2 this a continuation of this?

3 Q. It is not. It seems to be  
4 separate, and now Ms. Devlin has told Mr.  
5 Zmick that the doctor preferred a silent  
6 program and has gone with someone else and  
7 Mr. Zmick assumes, since HAN was the --  
8 apparently the only player out there that had  
9 silent content, that she was talking about  
10 HAN, so Mr. Zmick tries to sell Ms. Devlin  
11 ContextMedia over HAN. And now, because  
12 she's told him she's interested in silent  
13 content, he sends her different content. Now  
14 she's getting ContextMedia's silent content.  
15 That's what I read of this.

16 A. Does ContextMedia have silent  
17 content?

18 Q. It did.

19 A. It did?

20 Q. There's two links to it right  
21 there in the front page.

22 A. I've never seen it. I mean, you  
23 know, being in the field, I don't recall they  
24 ever had silent content. That would be --

Jill Brewer, 3/25/2014

83

1 I -- well, you don't want to know what I  
2 think, but I find that -- I don't know how  
3 they could do that, but that would not be  
4 what they have sold their advertisers. So  
5 that would be --

6 Q. Do you see, can you read the  
7 words silent loop?

8 A. I see it, but what I'm sharing  
9 with you is that, how they could really  
10 distribute that because their advertisers  
11 didn't have content designed for silent.  
12 They only had content designed for sound, so  
13 I guess they would put -- I would think they  
14 would be in conflict, or whatever the word  
15 would be, with their contract with their  
16 advertisers.

17 Q. I can assure you they were not.

18 A. I know, but it seems to me,  
19 because that's how they pay for it, right?

20 Q. Are you aware that some  
21 practices actually prefer a silent program?

22 A. Am I aware?

23 Q. Right.

24 A. I think the majority of

Jill Brewer, 3/25/2014

84

1 practices prefer silent.

2 Q. So it would be reasonable for  
3 ContextMedia to have the capability to offer  
4 both?

5 MR. BERNAY: Objection.

6 A. I don't know what would be.  
7 You -- creating content for sound is -- it  
8 would be dramatically different than creating  
9 content for silent. They are not one and the  
10 same.

11 Q. Have you ever spoken to anybody  
12 at ContextMedia?

13 A. Have I ever spoken to anyone at  
14 ContextMedia? On the phone, in person?

15 Q. In the phone, in person, let me  
16 include written communications, e-mail, any  
17 form of communication, pigeon?

18 A. I saw them at a conference and I  
19 saw a couple reps there because they took  
20 some of our stuff, and I spoke to them. And  
21 I told them that I knew they took our stuff.

22 Q. When you say took their stuff,  
23 marketing brochures and materials from your  
24 booth?

Jill Brewer, 3/25/2014

85

1           A.       Actually, I think -- I don't  
2       recall exactly, but I remember, I think they  
3       took something more than that. I think they  
4       took like maybe a display or a poster board  
5       or something.

6           Q.       And you told them you didn't  
7       like that?

8           A.       Yes.

9           Q.       Told them to give it back?

11:21 10          A.       I'm sure.

11          Q.       Okay.

12          A.       There were a couple guys at this  
13       conference. That would be, as I recall,  
14       again, it's been a long time, my only verbal  
15       communication with them.

16          Q.       Why didn't you like them taking  
17       HAN marketing materials from your booth?

18          A.       No, they didn't take HAN  
19       marketing materials from our booth. They  
11:21 20       took, I think, actually like a presentation  
21       board. I mean, they had -- they're at the  
22       conference, they can walk up and take a  
23       pamphlet, that's -- I mean, that's -- that's  
24       what every competitor does at every

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86

1 conference everywhere, right? You walk by,  
2 you say thank you very much. I mean, it's  
3 laid out there for public take, and you're at  
4 the conference, you're part of that. But if  
5 I recall, they didn't take those materials,  
6 they took a display board.

7 Q. What's a display board in this  
8 context?

9 A. I don't remember details, but  
10 I'm thinking it was like a large -- like  
11 maybe a large board, like a -- like a poster  
12 board kind of thing.

13 Q. Displaying information about  
14 HAN?

15 A. I don't remember any other  
16 details.

17 Q. It was forward facing to the  
18 public though, right?

19 A. It was forward facing to the  
20 public, but it was a presentation board. So  
21 it's probably a couple hundred dollars or  
22 something. So it wasn't to be taken, right?  
23 You know what? Actually, I think it was one  
24 of our display cases. That's that it was. I

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87

1 think it was one of our display cases from  
2 our -- over the from there. That's what it  
3 was, that's all we would have up there is a  
4 display case.

5 Q. What's a display case?

6 A. It's what goes in the exam room,  
7 like hack, half those kind of things.

8 Q. I don't understand.

9 A. It would be like a -- it's a

11:23 10 board that can mount on the wall, go over the  
11 door that has advertising at the bottom and  
12 educational brochure and pamphlets for  
13 patients to take.

14 Q. So it's written materials, it  
15 holds -- does the display case hold written  
16 materials?

17 A. It holds written materials and  
18 advertising, and then the case itself. Again,  
19 if you look at the -- if you look at their  
11:23 20 sales collateral, it'll be in there.

21 Q. When you say advertising, what  
22 do you mean?

23 A. Like pharmaceutical advertising  
24 at the bottom.

Jill Brewer, 3/25/2014

88

1 Q. Print?

2 A. Em-hm.

3 Q. And so they picked up this big  
4 board and walked away with it?

5 A. I don't remember the details. I  
6 don't remember the details around it. I was  
7 just told they -- I was just told they took  
8 it.

9 Q. I see. So you didn't see them  
10 do it, someone else told you that?

11 A. Correct.

12 Q. Who told you that?

13 A. The -- the people who managed  
14 the convention.

15 Q. Were you there? Were you there  
16 at the convention when this happened?

17 A. Yeah, I was there.

18 Q. So then what did you do? You  
19 went over to ContextMedia --

11:24 20 A. And said, do you -- you took  
21 that, and they just -- I don't remember the  
22 conversation. They just -- I don't -- they  
23 just looked at me or something.

24 Q. Did you see your display booth

Jill Brewer, 3/25/2014

89

1 in their booth?

2 A. No, that would be sort of silly  
3 to have a Healthy Advice product in a  
4 ContextMedia booth, but.

5 Q. So you never saw anybody --

6 A. No, I was just told.

7 (Exhibit 36 identified.)

8 Q. Okay. Now, let me show you  
9 what's been marked as Defendant's Exhibit 36.

11:24 10 This is another e-mail concerning the  
11 activities of Ms. Devlin. It doesn't look  
12 like you're on this. But --

13 A. Because I wasn't employed at  
14 that time.

15 Q. April 2012, you're no longer  
16 there?

17 A. Nope.

18 Q. Okay.

11:25 19 A. So I can't really speak to that  
20 because I'm not employed.

21 Q. Okay. I'll just ask you one  
22 question. In April 2012, do you know what  
23 position Mike Collette held with the company?

24 A. I wasn't there, I have no idea.

Jill Brewer, 3/25/2014

90

1 Q. No idea, okay. Now, I'll show  
2 you what's previously marked as Defendant's  
3 Exhibit 40.

4 (Exhibit 40 identified.)

5 A. So we're back to this. For me  
6 to keep them in order, because it sort of  
7 seems to go together. Here we go, it goes  
8 back to '11, October 12, '11; October 13,  
9 '11.

11:26 10 Q. Do you recall this e-mail  
11 exchange?

12 A. Yes, I do.

13 Q. And this has to do with HAN  
14 learning that, as part of its sales efforts,  
15 ContextMedia was sometimes offering a  
16 practice a gift card, right?

17 A. I mean, I remember. What I  
18 remember more is that the content was being  
19 shown on -- let's see. Humira was shown on  
11:26 20 RHN network, because we had exclusive  
21 agreements with Humira. So I believe this is  
22 critical --

23 (Reading out loud to herself.)

24 I'm reading, I'm just reading

Jill Brewer, 3/25/2014

91

1 what's on here, sorry. I'll be quiet. I  
2 forgot, I forgot. I'll read to myself.

3 Q. So what do you recall about this  
4 incident?

5 A. I'm reading. I remember thinking  
6 this was big stuff, that if this is a black  
7 box of drug that requires 90 minutes, it was  
8 a 30-second spot. How did the Humira content  
9 get on that network.

11:27 10 Q. And what -- did you ever get to  
11 the bottom of it?

12 A. We did not.

13 (Exhibit 44 identified.)

14 Q. All right. Let me show you what  
15 was previously marked as Defendant's  
16 Exhibit 44. It doesn't appear you're on this  
17 one either. The e-mail on the front page from  
18 Colette Brady, dated November 29, 2010, to  
19 Amanda Devlin states in the third sentence,  
11:28 20 "After all the ACNs that Cassie has stolen  
21 from Rheumatoid Health Network, and it now  
22 looks like someone has now swiped one of  
23 mine," do you see that?

24 A. Em-hm.

Jill Brewer, 3/25/2014

92

1 Q. Does this refresh your  
2 recollection at all as to whether or not HAN  
3 had been switching practices from  
4 ContextMedia to HAN during this time frame?

5 A. No different, it's just -- I  
6 mean, these people were really -- I mean, our  
7 objective was to get the physicians. So I did  
8 not manage -- I mean, I managed the people  
9 that managed the people, so this would not be  
10 any more important than -- I mean, I just  
11 looked at the total numbers, so.

12 Q. Okay.

13 A. Yeah.

14 Q. This is not -- you wouldn't be  
15 this deep in the weeds?

16 A. No. I mean, it's just a  
17 practice I think.

18 Q. Okay.

19 A. Let me finish reading to make  
20 sure.

21 Q. Sure.

22 A. Yeah, sorry, I can't help you  
23 there.

24 (Exhibit 47 identified.)

Jill Brewer, 3/25/2014

93

1 Q. Okay. Moving right along, let  
2 me show you what's been marked as Defendant's  
3 Exhibit 47. This is an e-mail from --  
4 exchange, excuse me, between Mike McAllister  
5 and Amy Finley in February 2011. Mr.  
6 McAllister was the CEO at the time?

7 A. No. COO.

8 Q. COO, thank you. Who was the CEO  
9 in 2011?

11:31 10 A. Mike Collette.

11 Q. Do you know why Ms. Finley, who  
12 reports to you, would be communicating  
13 directly through Mr. McAllister? Or was that  
14 something that just happened? You weren't  
15 that rigid in terms of your reporting?

16 A. He was the -- when I had  
17 spent -- when it was clear that the  
18 executive, that Collette, McAllister,  
19 whomever made a decision not to pursue legal  
11:31 20 action against ContextMedia for whatever  
21 reason, I didn't want to waste any more of my  
22 time on it, and so I told Mike to.

23 Q. Okay.

24 A. I mean, if you'll see, I'm not

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94

1 in a lot of exchanges because I'm out of them  
2 because it's -- once they decided not to  
3 pursue legal, which I felt we should have at  
4 the time, or take this graver steps, and so  
5 this specific response is probably the -- is  
6 probably specifically, because it looks like  
7 there's a lot of stuff deleted here.

8 Q. No, not to my knowledge.

9 A. Okay. Anyway, it looks like that  
10 this is -- the only reason I say that,  
11 there's, like, lines and stuff up here, so it  
12 looks like there was stuff attached to this,  
13 but that's fine.

14 Q. This is how I got it.

15 A. Okay. But I'm just saying it  
16 looks to me like there's more here, but I  
17 would say that this is specific and to --  
18 regarding RHN, and not to the network as a  
19 whole, because I was no longer managing it  
20 and Mike McAllister was, managing the -- the  
21 conflict, I guess, whatever you call it.

22 Q. So as of February -- sometime  
23 prior to February 2011, in your view, HAN  
24 should have initiated litigation against

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95

1 ContextMedia; is that right?

2 A. I'm saying that we should have  
3 done something. I don't -- I'm not a lawyer  
4 so I don't know what we should have done, but  
5 I'm saying I felt like we should have done  
6 something, that we should have taken some  
7 kind of action. I don't know what that -- I  
8 just felt like we should have done something.

9 Q. Why?

11:33 10 A. Because this comes back to the  
11 feel. Because, specifically, I recall that we  
12 had evidence that one of the units that was  
13 taken, that ContextMedia took out of the  
14 practice, that it actually had been tampered  
15 with before we received it. So we -- by the  
16 time, because we check all that, so the time  
17 it came down, someone looked in to -- opened  
18 it up, I don't remember the details, before  
19 they shipped it, so it went to a third-party,  
11:34 20 so the products weren't shipped straight, the  
21 product was not shipped from the office, it  
22 was shipped to an office in Chicago and then  
23 from that office to here, and then our  
24 diagnostics showed that content had been

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Jill Brewer, 3/25/2014

96

1 touched, opened, I don't remember, but.

2 Q. Copied?

3 A. I don't know. I just know that  
4 there had been access to the content, which I  
5 felt, if -- if someone took possession of our  
6 property. So in other words, it didn't leave  
7 the office and was shipped directly to us, it  
8 was shipped to an office an office, and from  
9 that office it was accessed and then from  
10 there it was shipped to us. That's when I --  
11 that's why I felt like we should have taken  
12 some kind of action.

13 I do not -- and -- so the  
14 debate, I guess, financials or whatever they  
15 decided, and I said I'm exhausted, I've spent  
16 too much time with it and you guys deal with  
17 it, I'm gonna -- I've got bigger fish -- not  
18 bigger fish, I've got a lot to do. And so  
19 that's why their communications began.

20 Q. Okay. Was it your understanding  
21 that ContextMedia had received this device  
22 and then, as you said, touched or looked at  
23 the content?

24 A. Pardon?

Jill Brewer, 3/25/2014

97

1 Q. Were you upset because  
2 ContextMedia had looked at your content?

3 A. I wasn't upset. I felt like  
4 that was illegal.

5 Q. Okay. But you were --

6 A. They didn't, it wasn't content.  
7 The physical device, our property, was  
8 transported to a third -- to a site, so  
9 someone illegally took possession of the  
10 property and illegally looked at the content  
11 and how we -- whatever is inside all that  
12 stuff, and then it was shipped. So it was the  
13 illegal possession of the property, in my  
14 mind.

15 Q. And then without -- consistent  
16 with Mr. Bernay's admonition earlier, without  
17 disclosing to me anything that was said to  
18 you by a lawyer, what's your understanding of  
19 why your recommendation wasn't acted on and  
20 something was not done about this?

21 MR. BERNAY: Objection. And,  
22 again, my admonition stands, do not reveal  
23 conversations --

24 A. I don't recall. It wasn't with

Jill Brewer, 3/25/2014

98

1 counsel. It was the decisions internally.

2 Q. Okay. Who was involved in that  
3 process?

4 A. The same people I told you  
5 earlier, the CEO and the COO. It was their  
6 decision not to.

7 Q. McAllister and Collette?

8 A. Correct. Mike and Mike.

9 Q. Did they tell you why they made  
11:37 10 the decision they did?

11 A. Nope.

12 Q. Now, here Mr. McAllister is  
13 asking Ms. Finley if offices are telling HAN  
14 why they are switching to ContextMedia,  
15 right?

16 A. I guess, so Mike obviously sent  
17 her a question. There we go. What -- I mean,  
18 I can only tell you what it says. This isn't  
19 to me.

11:37 20 Q. Okay. Never mind. Do you recall  
21 being involved in efforts by HAN to complain  
22 to J3 about ContextMedia?

23 A. Who is J --

24 MR. BERNAY: Object to the form.

Jill Brewer, 3/25/2014

99

1 A. What is J3?

2 Q. You're not familiar with the  
3 name J3?

4 A. (Witness shakes head  
5 negatively.)

6 Q. You didn't work the advertiser  
7 side of the business, right?

8 A. (Witness shakes head  
9 negatively.)

11:38 10 Q. You have to answer out loud.

11 A. No, I did not.

12 Q. And you weren't aware that J3  
13 was the captive advertising agency for  
14 Johnson & Johnson?

15 A. No.

16 Q. Let me show you what we have  
17 marked as Defendant's Deposition Exhibit 74.  
18 This is a long one so take whatever time you  
19 want to look at it.

11:39 20 (Exhibit 74 identified.)

21 A. Yes. Some segments. So I'm  
22 assuming that R3 response would be that  
23 somebody asked me -- I'm assuming R3 had  
24 questions.

Jill Brewer, 3/25/2014

100

1 Q. You mean J3?

2 A. Whatever, yeah. Those people. I  
3 wasn't -- I was like the righteous one, so  
4 that pharmaceutical advertising.

5 Q. Well, if you look at page 5.

6 A. I'm getting there.

7 Q. Oh, I'm sorry. Let me know when  
8 you're done reviewing it.

9 A. Okay. I'm on page 5.

11:44 10 Q. All right. It looks like page 5  
11 indicates when you get added to this e-mail  
12 discussion when Mike McAllister forwards the  
13 chain to you, right?

14 A. That's what it looks like.

15 Q. Okay. And then you have, on  
16 page 4, an e-mail that you write, correct?

17 A. 2:29.

18 Q. Do you see that?

11:45 19 A. I'm backing up to go October 28,  
20 2011. These are just out of order. It would  
21 be more helpful if they were in order. So,  
22 for example, October 20, 2011, 3:58, then I  
23 go to 2:29, but then now I'm back at 2:44.  
24 But that's okay. So I'm just trying to make

Jill Brewer, 3/25/2014

101

1 sure that's in sequence.

2 Q. It could be due to different  
3 time zones, I don't know. But this is the  
4 way it was produced to me, Ms. Brewer.

5 A. Okay. So let me see. I'm  
6 looking at 4:03, 3:58. So, Linda responded,  
7 Sabrina responded.

8 Q. You realize you have to read  
9 these from the back to front, right?

11:45 10 A. Yes. But I'm saying that  
11 responded to my stuff.

12 Q. Well, when you're ready, I'd  
13 like to ask you some questions about your  
14 e-mail on page 4.

15 A. Okay, go ahead.

16 Q. You start off by saying, "At  
17 some point we need to get together to discuss  
18 a plan to sustain this universe into 2012 as  
19 it doesn't look like these guys are going  
11:46 20 away," do you see that?

21 A. Em-hm.

22 Q. What you did mean by that, if  
23 you recall?

24 A. That all I meant by that is that

Jill Brewer, 3/25/2014

102

1 there were a lot of competitors. One of  
2 which, and I don't even know that they still  
3 don't have a product if you go back here,  
4 Health Monitor, I suspect that they're not in  
5 business anymore. So a lot of competitors  
6 come and go. I could list you tons. So it  
7 was my takeaway here is that this competitor  
8 was not leaving.

9 Q. And when you say, "sustain this  
11:46 10 universe into 2012," that sounds sort of  
11 apocalyptic. I mean, what do you mean by  
12 that?

13 MR. BERNAY: Object to the form.

14 A. Apocalyptic, sustain. If you  
15 look at my other communication, I used that  
16 word a lot. I spoke earlier to the fact that  
17 if I sell \$100 -- doctors, I had to deliver  
18 100 doctors. So sustain would be sustain the  
19 bucket.

11:47 20 Q. The universe is the bucket?

21 A. The universe, ACN bucket. The  
22 universe is ACN bucket.

23 Q. And later on in your e-mail you  
24 have a parenthetical reminding folks that

Jill Brewer, 3/25/2014

103

1 Berne is the alias that Amanda Devlin used to  
2 dialogue with RHN to get the information  
3 attached, right?

4 A. I'm assuming that what I  
5 forwarded had that e-mail attached to it so  
6 that I would want people to know that, I  
7 guess.

8 Q. Why were you forwarding that to  
9 other members of senior management?

11:47 10 A. Why wouldn't I?

11 Q. And then you write, "Regarding  
12 R3's response, see my comments below," and  
13 then if you go to the long e-mail from Mr.  
14 Casma, which begins on page 5 and goes over  
15 to page 7.

16 A. Em-hm.

17 Q. There's inserted in there in a  
18 number of places, in brackets, JB.

19 A. Em-hm.

11:48 20 Q. And that's you, right?

21 A. Yes.

22 Q. And you inserted some comments  
23 in there, right?

24 A. Yes.

Jill Brewer, 3/25/2014

104

1 Q. Okay.

2 A. That was to Kim. Those comments  
3 would be to Kim.

4 Q. Okay.

5 A. So my, Hi, Kim. So my  
6 comment -- this -- my comments are in this  
7 context, wouldn't it have it to Kim? Because  
8 my comments are only inserted as a response,  
9 so it should be from me to Kim.

11:48 10 Q. No, it's not. It's from you to  
11 Mike McAllister, Tom Campbell, Debbie  
12 Schnell, Sabrina Shattles, Scott Nesbitt, Kim  
13 Coar, Linda Ruschau, Liz Phillips, Amanda  
14 Devlin, Liz Greppo -- Grippo and Amy Finley,  
15 that's who your e-mail's to.

16 A. With the comments?

17 Q. Right.

18 A. Then I am stupid.

11:49 19 Q. Then go up on page 4 at the top,  
20 Ms. Ruschau then responds to your e-mail and  
21 she says, "Thanks for sharing the  
22 information, Jill. And great detective work,  
23 Amanda," do you see that?

24 A. I see.

Jill Brewer, 3/25/2014

105

1 Q. Okay.

2 A. And then --

3 Q. And the great detective work on  
4 Amanda's part that she's talking about is her  
5 impersonating a practice to gain information  
6 regarding ContextMedia, right?

7 MR. BERNAY: Object to the form.

8 A. So I -- again, call me stupid,  
9 but I am looking -- it says Jill Brewer,  
10 rheumatology, and all the people you said,  
11 and, "regarding our future response, see my  
12 comments below," right?

13 Q. Right.

14 A. And then there's an e-mail from  
15 Mike McAllister, so I'm not sure -- I just am  
16 not sure of that flow, but it doesn't matter.  
17 Do you see my point?

18 Q. No.

19 A. I guess it doesn't matter, but,  
20 yes, the JB are my comments.

21 Q. Okay. But back on page 4 I was  
22 asking you a question about Ms. Ruschau's  
23 e-mail, the question that was pending was  
24 when Ms. Ruschau says, "Great detective work,

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Jill Brewer, 3/25/2014

106

1 Amanda!" What she's talking about is Amanda  
2 impersonating a practice to gain information  
3 from ContextMedia, right?

4 A. I can't say that. But is that  
5 e-mail attached?

6 Q. If you don't know, you can just  
7 say so, Ms. Brewer.

8 A. Yeah, I can't. I don't know  
9 exactly. I'd have to put it together.

11:51 10 Q. In the same e-mail, Ms. Ruschau  
11 writes to you and others, "I would like to be  
12 involved in the discussions. It is obvious  
13 we have to put a larger emphasis on retention  
14 and truly partnering with our practices if we  
15 are going to win or compete," do you see  
16 that?

17 A. Yeah.

18 Q. Did you agree with that  
19 statement at the time?

11:51 20 A. I don't know what she means by  
21 truly partner with our practices if we are  
22 going to win. I don't know what she means by  
23 that.

24 Q. So did you ask her at the time

Jill Brewer, 3/25/2014

107

1 what she meant by that?

2 A. No. Because Linda is a  
3 salesperson and this is her client and she is  
4 just trying to champion for her client and  
5 her personal profits.

6 Q. And back on to the first page,  
7 there's another e-mail from you dated  
8 October 28, 2011. And you write, "Yes, some  
9 segments have video with closed caption and  
10 some are Flash animation or PowerPoint  
11 slides, which is how they describe our  
12 programming to prospects," do you see that?

13 A. I see that.

14 Q. Does this refresh your  
15 recollection as to whether you clicked on any  
16 of the loops and actually looked at them?

17 A. No, because I could have been  
18 told that.

19 Q. Okay. And if you go over to the  
20 next page --

21 A. I mean, I could. I'm saying I  
22 do not recall that, that I couldn't tell you  
23 what it looked like.

24 Q. Okay.

Jill Brewer, 3/25/2014

108

1           A.       But clearly Sabrina did because  
2 she looked at it.

3           Q.       This e-mail suggests you did as  
4 well, does it not?

5                   MR. BERNAY: Object to the form.

6           Q.       Never mind, I'll withdraw the  
7 question.

8                   Go to the next page, page 2,  
9 please, and the second paragraph that appears  
10 on that page. You begin by saying, "With  
11 regard to churn, what we've heard is that  
12 many offices are just trying something new or  
13 there is a new manager, so they don't know us  
14 or the product well," do you see that?

15           A.       Em-hm.

16           Q.       Would that have been a true  
17 statement at the time you wrote it?

18           A.       That would be -- this would be  
19 consistent with the Amy Finley comment that  
20 they want something entertaining with sound,  
21 and I'm saying, yes, that's one reason, but  
22 it's also just because it's something new or  
23 a new manager and they don't know us or the  
24 product very well.

Jill Brewer, 3/25/2014

109

1 Q. Okay.

2 A. So all of these are around the  
3 same time, I think.

4 Q. And when you made that  
5 statement, you felt you were being truthful,  
6 right? That was my question.

7 A. If you look at the reason codes  
8 for transition, or, you know, for loss, if  
9 you look at the reason codes, it would spell  
10 it out expressly. So I'm saying here,  
11 frankly, it could be a little exaggeration  
12 because I didn't want sound.

13 Q. So you don't know if it's  
14 truthful or not?

15 A. I'm saying mini is objective. So  
16 what does mini mean?

17 Q. You don't have an understanding  
18 of the --

19 A. No. I can tell you that the  
20 intent here was a little bit -- is that I did  
21 not want sound.

22 Q. Okay.

23 MR. JAHN: Pardon me, Counsel,  
24 we're off the record.

Jill Brewer, 3/25/2014

110

1 (Break taken.)

2 MR. JAHN: We're on the record  
3 with DVD No. 2.

4 (Exhibit 80 identified.)

5 Q. I've now handed to you and  
6 counsel for HAN what's been marked as  
7 Defendant's Exhibit 80. Again, this is  
8 another e-mail communication you're not on.  
9 Do you know who Vida Albert was in December  
10 2011?

11 A. Vida? Yes, I know Vida.

12 Q. What was Vida's job in  
13 December 2011?

14 A. I don't remember. She had a lot  
15 of different jobs.

16 Q. Was one of them responsibility  
17 for figuring out what happened to equipment  
18 when a practice left?

19 A. I don't think there was a job  
12:01 20 that that was -- nobody had just that job.  
21 That was sort of like tracking. I can't tell  
22 you that. I don't recall that being an  
23 explicit job. I mean, it wouldn't be a  
24 full-time job.

Jill Brewer, 3/25/2014

111

1 Q. I didn't suggest it was full  
2 time, but that she was the person that had  
3 that responsibility. It sounds like you  
4 don't remember --

5 A. No.

6 Q. That's fine.

7 A. No, it's like, yeah.

8 Q. It's written here that Lori  
9 writes -- you know who Lori Smith is, right?

12:02 10 A. Em-hm.

11 Q. Lori writes, "Vida, will you  
12 please write off the CPU for this location.  
13 Their equipment was removed by DHN and their  
14 CPU was not returned. Since we don't have an  
15 EA on file and the CPU was old, Heather  
16 approved that I stop --" it says perusing,  
17 but I bet she meant "pursuing the return of  
18 the equipment," do you see that?

19 A. Em-hm.

12:02 20 Q. Does this refresh your  
21 recollection of instances where HAN allowed  
22 equipment to stay with the practice after the  
23 practice had left --

24 A. No.

Jill Brewer, 3/25/2014

112

1 MR. BERNAY: Object to the form.

2 A. No, I don't. If I read the rest  
3 of it. What this is saying is that it was  
4 removed by the Diabetes Health Network and  
5 the CPU was not returned with the monitor,  
6 and the CPU is old, so it would have already  
7 been written off the books anyway. So even  
8 though we don't have it in our possession, we  
9 have to -- through our accounting purposes,  
10 because old equipment we dispose of anyway.  
11 And our accounting policies were, when it  
12 became off the books or we disposed of  
13 equipment that was broken, or I guess broken  
14 would be that -- that you couldn't use any  
15 more, you had to dispose of it or write it  
16 off, and that is what this is referencing.

17 Q. Well, that's not true. It also  
18 says, "Heather approved that I stop pursuing  
19 the return of the equipment," do you see  
20 that?

21 MR. BERNAY: Objection.

22 A. Yeah, because we track all their  
23 equipment. But once there was an  
24 investigation -- I'm just telling you what

Jill Brewer, 3/25/2014

113

1 I -- once they looked into it, and it's not  
2 here, they're like, well, you know, I guess  
3 let it go, because of its age and it's not  
4 there. Because if you go down to the  
5 practice, if you read the rest of this, it  
6 says -- explains she, "Mrs. Trager called and  
7 explained she spoke with Diabetes Health  
8 Network and they told her that our CPU is the  
9 only size of a book, and was in the same box  
10 as the monitor." So she called Diabetes  
11 Health Network, who obviously packed up the  
12 equipment. It had a Lenovo -- we knew it had  
13 a Lenovo, which I told you we track. "Since  
14 we write off the equipment, I let it go. She  
15 wondered why we are just now calling since  
16 the system was removed in November and it is  
17 now December. I explained that I was on  
18 leave." So that is what that's about.

19 Q. Isn't it an instance where HAN  
20 decided not to pursue the return of the  
21 equipment because it felt the equipment was  
22 antiquated?

23 A. No.

24 MR. BERNAY: Object to the form.

Jill Brewer, 3/25/2014

114

1           A.       No.    This an example of the  
2   computer is gone, it wasn't in the box.   And  
3   even if we got it back, we would have  
4   disposed of it, and we couldn't -- there was  
5   no way to find it, it was gone.   And the  
6   practice says, I called Diabetes Health  
7   Network, they said they put it in the box.  
8   It was gone, so we either had to -- I mean,  
9   it was gone. There was nothing to do. That  
12:05 10   happened -- if you read other e-mails,  
11   there's often, in the e-mails that I had, it  
12   said that when it came back it's -- I believe  
13   I read here that I said, half the time, or  
14   whatever I said, that parts of what got  
15   returned wasn't.   I say, "Currently, we are  
16   still missing seven systems and in almost  
17   every instance, 49, we are missing one or  
18   more components." So when they -- when RHN  
19   would pack it up, we never got all of our  
12:06 20   stuff back.   That's what that says, and  
21   that's what that's talking about.

22           Q.       So when it's written, "Heather  
23   approved that I stopped pursuing the return  
24   of the equipment."

Jill Brewer, 3/25/2014

115

1 A. Em-hm.

2 Q. It means something other than  
3 the plain English there?

4 A. Yeah, it means something other  
5 than the plain English.

6 (Exhibit 81 identified.)

7 Q. Do you recognize what I've  
8 marked as Exhibit 81?

9 A. I -- this is a rheumatology,  
12:06 10 yeah, a fact sheet. Okay.

11 Q. My question is, do you recognize  
12 it?

13 A. Em-hm.

14 Q. And this is an example of  
15 marketing collateral that HAN used to sell  
16 against ContextMedia?

17 A. I would have to study it to say  
18 it's exactly what was there when I was there.  
19 But, yes, there was something like this. This  
12:07 20 would have been put together by Morgan Moore  
21 and Amanda and Lisa. I did not put this  
22 together, the three of them did.

23 Q. All of them report up to you,  
24 though, right?

Jill Brewer, 3/25/2014

116

1 A. Yep, they sure do.

2 Q. And then one of the selling  
3 points that you include here is "Accountable  
4 for content," do you see that in the middle?

5 A. Yes.

6 Q. What does it mean in the context  
7 of this document to say "accountable for  
8 content"?

9 A. Well, if you wrote that --  
12:07 10 Rheumatoid Health, if I recall, if I recall,  
11 three years. I recall that they actually  
12 have an exclusion in their contract or in  
13 their advertising, or whatever, their  
14 website, I think it may be the website, where  
15 they say they are not accountable for the  
16 content.

17 Q. And what do you mean to say --  
18 what does HAN mean to say when it says it is  
19 accountable for content?

12:08 20 A. Well, we are accountable, we  
21 were accountable.

22 Q. And then at the bottom there's a  
23 selling point "Dedicated account managers,"  
24 do you see that?

Jill Brewer, 3/25/2014

117

1 A. Em-hm.

2 Q. And this says that HAN has them  
3 and ContextMedia does not, right?

4 A. Correct.

5 Q. How did you know that  
6 ContextMedia didn't have dedicated account  
7 managers?

8 MR. BERNAY: Object to the form.

9 A. The only way we would know, I  
12:08 10 would guess, is that, when you talk to  
11 practices and they said they -- again, I  
12 don't know. I don't know if it was something  
13 on their website that said a service  
14 representative will help you, you know, just  
15 a generic service. My guess is it says a  
16 generic service representative, whereas, when  
17 a practice enrolls with Healthy Advice, at  
18 the time they were actually given a business  
19 card of a name of their service  
12:09 20 representatives. So you had the recruitment  
21 person, and then they were given the business  
22 card of their dedicated person. So in other  
23 words, when you go to install that person,  
24 that sales rep, which is part of my customer

Jill Brewer, 3/25/2014

118

1 experience was tied to the onboarding person  
2 who was tied to the person who would manage  
3 their account ongoing. And I believe here,  
4 my guess is, is that from their website, that  
5 when you called in, someone would answer your  
6 call, but you're not -- that's what -- that's  
7 what that is.

8 Q. You don't know where that  
9 information came from, right? That permitted  
10 HAN to say, no, ContextMedia doesn't have  
11 dedicated account managers?

12 A. I don't recall. My thoughts  
13 would be that probably is taken from their  
14 website.

15 Q. Is it possible this is something  
16 that a practice told a member of HAN and  
17 therefore HAN felt comfortable --

18 A. No, no, no. My guess is that we  
19 extracted it from their website.

20 Q. You think there's something in  
21 their website that says we don't have  
22 dedicated account managers?

23 MR. BERNAY: Object to the form.

24 A. No, I didn't say that. I said I

Jill Brewer, 3/25/2014

119

1 believe the information was extracted from  
2 their website.

3 Q. Did you ever learn that that  
4 statement was false?

5 A. No. That I recall, no.

6 (Exhibit 82 identified.)

7 Q. I've now handed to you what's  
8 been marked as Defendant's Deposition Exhibit  
9 82. This is an e-mail dated November 16,  
10 2011, from Lisa Grippo to Diane Feyrer. Lisa  
11 Grippo did not report to you, right?

12 A. Yes, she did.

13 Q. Oh, she did? I thought she was  
14 on the advertiser side.

15 A. Nope.

16 Q. Okay. That's right, that's  
17 right. I'm mistaken. She works in the  
18 northeast region selling to practices, right?

19 A. She was a regional vice  
20 president.

21 Q. Okay. Who is Diane Feyrer?

22 A. One of her employees.

23 Q. Do you need time to look for  
24 something?

Jill Brewer, 3/25/2014

120

1 A. I'm listening. Go ahead.

2 Q. Okay. Well, the e-mail that I  
3 just marked as Exhibit 82 reads, "Let's see  
4 what she says. I know we are opposed in  
5 principle, but we may need to do this  
6 occasionally. I think Jill would be in favor  
7 but Kimberly is opposed. I would not do it  
8 regularly but... keep me posted," do you see  
9 that?

12:12 10 A. Okay.

11 Q. And if you look at the back or  
12 the second page in your example, there's a  
13 discussion about someone from HAN, it looks  
14 like, maybe -- I can't tell. Maybe you can  
15 tell me. Someone from HAN telling a practice  
16 that HAN could take down the ContextMedia  
17 equipment and install the HAN equipment,  
18 right?

19 A. Let me read it.

12:12 20 Q. Sure.

21 A. Who did Lisa send this to?

22 Q. I can't tell. But ultimately  
23 there's --

24 A. No, I mean, we need for this to

Jill Brewer, 3/25/2014

121

1 be -- you need to know who she sent this to.

2 Q. Well --

3 A. I need to know. So let me read  
4 it though. But it doesn't --

5 Q. Well, why don't you read it.

6 A. -- say who she sent to, which  
7 seems not correct.

8 Q. I'll represent to you this is a  
9 document produced --

12:13 10 A. I know, but then I'm just saying  
11 it doesn't say who she sent it to. Unless  
12 Diane sent it to her previously. So Diane is  
13 a salesperson, so Diane did this. Yes, it is,  
14 okay. So this looks to me like Diane said  
15 that to a practice.

16 Q. Said what to a practice?

17 A. "Hi. See below." It's what I'm  
18 saying together. "I may have stepped out of  
19 bounds, but I offered for our technicians to  
12:14 20 take down RHN when they install ours and to  
21 box up RHN neatly for them to pick up. The  
22 POC didn't sound like they would say yes to  
23 this, but in case they say yes, I am OK or  
24 should I retract my offer? Just thinking

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Jill Brewer, 3/25/2014

122

1 'outside the box'... pun intended." I do not  
2 believe this here is correct. I would never  
3 have authorized that. I'm just saying. I was  
4 incredibly ethical, I would never. So Lisa is  
5 responding to Diane, "Let's see what she  
6 says. I know we are opposed in principle, but  
7 we may do this occasionally, I think Jill  
8 would be in favor but Kimberly opposed."  
9 That --

12:15 10 Q. You don't agree with that  
11 statement?

12 A. No, I do not.

13 Q. You understand that Jill is you,  
14 right?

15 A. I understand Jill is you. I'm  
16 just saying that that's not right.

17 Q. You disagree with her assessment  
18 that you would be in favor of --

12:15 19 A. Absolutely, I would never do  
20 that. "I would not do it regularly, but keep  
21 me posted. Let's see what she says." So they  
22 are going to ask me, and if you read here,  
23 you can see that I said no, because this is  
24 what happened.

Jill Brewer, 3/25/2014

123

1 Q. Do you recall anybody coming to  
2 you asking you permission to remove  
3 ContextMedia equipment?

4 A. I can recall the salespeople  
5 saying that's crazy, that's what they're  
6 doing to us, why can't we do it? I said  
7 absolutely not. That's what I recall.

8 Q. Okay. And you surmised that the  
9 comment on page 2 reflects a decision not to  
10 remove the RHN equipment, right?

11 A. Yes.

12 Q. Isn't the timing wrong for that,  
13 ma'am? I mean, the timing of that comment is  
14 November 15th --

15 A. This is the 16th.

16 Q. -- 2011.

17 A. Yeah.

18 Q. And on the 16th they're thinking  
19 you'll approve, so if you rejected the idea,  
20 it had to be on the 16th or later, right?

21 A. It says, "I convinced her to  
22 keep it up for now since we will be  
23 installing." The other thing I would say is,  
24 that all of our comments, every time a

Jill Brewer, 3/25/2014

124

1 comment is added, a date and time stamp is  
2 stamped to it. So this looks like multiple  
3 comments without date and time stamps. And  
4 maybe we didn't do -- we didn't always have  
5 date and time stamps in every comment, but I  
6 don't know that. I'm just saying that it  
7 doesn't look like that. So I see that this is  
8 on the 11th, so if this is on the 11th at  
9 3:17, so it says, "Came to pick up, the only  
10 two boxes and a third box monitor was still  
11 there."

12 (Exhibit 83 identified.)

13 Q. Let's mark this as Defendant's  
14 Exhibit 83.

15 A. And Lisa could never approve  
16 this.

17 Q. I've now handed to you, Ms.  
18 Brewer, what's been marked Defendant's  
19 Exhibit 83. This has multiple pages, take  
20 whatever time you want to look at it and let  
21 me know when you're ready to answer some  
22 questions.

23 A. So I'm asking him to take a  
24 picture of where he saw the Humira ad on our

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Jill Brewer, 3/25/2014

125

1 content.

2 Q. I haven't asked a question yet,  
3 but go on.

4 A. But I'm playing -- I'm saying  
5 what this is.

6 Q. Okay.

7 A. That's what that is. I said,  
8 yes, take a picture. This is just confusing  
9 to me, so -- so go ask your questions.

12:21 10 Q. Okay. On page 2, Ms. Grippo  
11 again writes -- strike that, I'll start over.

12 On page 2, Ms. Grippo writes,  
13 "Can we force their hand and get it installed  
14 tomorrow? I am sure Jill will approve taking  
15 down the RHN equipment. Not the game I want  
16 to play, but we may have to. Thoughts?" Do  
17 you have any idea why Ms. Grippo, at least,  
18 on two occasions now, was sure that you would  
19 approve taking down ContextMedia's equipment?

12:21 20 A. No. It's two occasions regarding  
21 the same event. This is the same reference to  
22 the same event, these aren't different.

23 Q. Same practice?

24 A. Yes.

Jill Brewer, 3/25/2014

126

1 Q. Okay.

2 A. I'm guessing. Humira, New York,  
3 New York. Diane is New York, Lisa is in New  
4 York, this is the same. So I have no idea why  
5 she says that. She never says Jill did  
6 approve it, she says I'm sure Jill will. I  
7 never -- I just wouldn't do that. I can't  
8 imagine I would do that.

9 Q. And you don't know for a fact  
10 these two occasions are the same practice, do  
11 you?

12 A. It would be easy enough to find  
13 out, but my take away is that they are one  
14 and the same.

15 Q. Okay. And as you pointed out a  
16 moment ago, you had approved the taking of a  
17 picture of the ContextMedia content, right?

18 A. I wanted to get a picture of the  
19 Humira ad that was playing on our product --  
20 or no, I mean, the Humira ad that was playing  
21 on RHN.

22 Q. And you had no problem with  
23 that?

24 A. Taking a picture of an ad? No.

Jill Brewer, 3/25/2014

127

1 Q. Would you have any problem if  
2 one of your employees had taken a picture of  
3 the -- taken a video of the educational  
4 content?

5 MR. BERNAY: Object to the form.

6 A. I don't know.

7 Q. And to be clear, would you have  
8 any problem if someone was in a practice when  
9 a content was running in a patient waiting  
10 room with someone taking a video of the  
11 content under those circumstances?

12 A. Would I have a problem with  
13 that?

14 Q. Right.

15 A. No, probably not.

16 Q. Let me show you what we'll mark  
17 as Exhibit 84.

18 A. Is that illegal?

19 Q. I'm not here dispensing legal  
20 advice.

21 MR. BERNAY: We're not here to  
22 answer questions.

23 A. I don't think it's illegal.

24 (Exhibit 84 identified.)

Jill Brewer, 3/25/2014

128

1 Q. Exhibit 84, which I've just  
2 handed to you, appears to be an e-mail  
3 exchange that starts involving Ms. Billmann,  
4 Liz Billmann, to be precise, Amy Finley, Lisa  
5 Grippo, Heather McGauvran, and then it  
6 involves you, and Lisa Grippo sends you an  
7 e-mail. Do you see that?

8 A. Em-hm.

9 Q. And on the back there's a  
12:25 10 comment in CMS concerning a practice who is  
11 switching from HAN to ContextMedia, right?

12 A. Okay.

13 Q. And Ms. Billmann reports that,  
14 when she tried to schedule the removal of the  
15 HAN equipment, the person at the practice  
16 said that ContextMedia will take down the  
17 equipment and ship it to HAN, right?

18 A. Em-hm.

19 Q. And then Ms. Billmann tells the  
12:25 20 practice, if anything happened to the  
21 equipment, his office would be responsible,  
22 right?

23 A. Em-hm.

24 Q. And his responses to that was,

Jill Brewer, 3/25/2014

129

1 "He said that we took the equipment down when  
2 we enrolled them, and he just thought it was  
3 an industry standard," do you see that?

4 A. Em-hm.

5 Q. And the we there is HAN, right?

6 A. Em-hm.

7 Q. Do you recall instances where  
8 HAN took down the equipment of a competitor?

9 A. Never. This is -- and I bet, if  
10 you look this up, you could see if they were  
11 ever installed there. Often a practice would  
12 have a -- Reston, Virginia Town Center, they  
13 would have had their own TV or their own old  
14 special report, or old -- their old stuff,  
15 and we, as a courtesy, would do that. Then we  
16 stopped doing it because of liability. So  
17 they would ask us sometimes to take down  
18 their product. I mean, their own personal  
19 equipment.

12:26 20 Q. But as you sit here today, you  
21 have no idea what this person at the practice  
22 is referring to here, do you?

23 A. I would bet \$1,000 or more what  
24 I just said is what that refers to.

Jill Brewer, 3/25/2014

130

1 Q. Do you gamble a lot?

2 A. Nope. I only bet when I know  
3 I'm right.

4 Q. On the --

5 A. It would be easy enough to find  
6 out.

7 Q. On the front here, Ms. Grippo  
8 writes to you, "They must be increasing their  
9 incentives to switch. Doubt that anyone  
10 would consider a \$100 gift card such a great  
11 incentive. Ugghh!! Can we steal their  
12 sponsors so they run out of \$\$?" Do you see  
13 that?

14 A. Em-hm.

15 Q. Did you ever have a discussion  
16 with Mr. -- Ms. -- let me start over.

17 Did you have a discussion with  
18 Ms. Grippo about trying to steal ContextMedia  
19 sponsors?

12:27 20 A. We aren't in the advertising  
21 side, that was a joke.

22 Q. Okay.

23 A. We're on the physician side.

24 (Exhibit 85 identified.)

Jill Brewer, 3/25/2014

131

1 Q. I have now handed to you  
2 Defendant's Deposition Exhibit 85. Let me  
3 know when you're done reviewing it.

4 A. Okay.

5 Q. In the middle there, Ms. Devlin  
6 writes to Thaleen Varian. Do you know who  
7 Thaleen Varian is?

8 A. She was a former sales rep in  
9 the field.

12:30 10 Q. She reported up to you?

11 A. She reported to Amanda, who  
12 reported to me.

13 Q. And is Ms. Devlin still with the  
14 company as far as you know?

15 A. Yes.

16 Q. And it's written there, "If we  
17 were installing in the same spot we need the  
18 uninstall date. I don't know of any offices  
19 that have switched. From our experience with  
12:30 20 Accent Health, we need a firm date and the  
21 practice needs to tell them they will remove  
22 it if the system is not removed by the  
23 promised date of removal," do you see that?

24 A. Em-hm.

Jill Brewer, 3/25/2014

132

1 Q. Accent Health is a competitor,  
2 right?

3 A. Yes.

4 Q. And a practice is switching from  
5 Accent Health to Healthy Advice, right?

6 A. It looks that way.

7 Q. And were you aware of instances

8 where HAN representatives told the practice

9 to tell a competitor in a switch out

12:31 10 situation that, if the competitor didn't get

11 the equipment down by the promised date, that

12 the practice could take it to down?

13 MR. BERNAY: Object to the form.

14 A. No, I recall our thought is

15 because -- is that we -- what this does, it

16 says that we're not going to do it. And if

17 they want the install date, then they

18 would -- we're not going to do it for them.

19 So what they choose to do is what they choose

12:31 20 to do, but we're not going to do it, that's

21 what this says.

22 And if you read down here, it

23 says we need the uninstall date, meaning

24 we're not going to show up until it's

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Jill Brewer, 3/25/2014

133

1       uninstalled.

2               Q.       Right. But aren't you also  
3       advising the practice that they should tell  
4       the competitor, if the competitor doesn't get  
5       it down by the date, the practice is going to  
6       go ahead and take it down?

7               A.       No. We are trying to let the  
8       practice -- we need a firm date and the  
9       practice needs to tell them, the vendor, that  
12:32 10       they -- because they were competitors, I'm  
11       thinking Context, I don't know this. That  
12       wouldn't show up and take the equipment.  
13       They'd just leave it there, even after they  
14       tried to cancel. So this is saying the  
15       practice needs to tell them, the vendor, they  
16       will remove it if the system is not removed  
17       by the promised date of removal. That is a  
18       way to help give the vendor incentive to  
19       actually remove it if they choose to switch.

12:32 20              Q.       Are you aware of instances where  
21       a practice told HAN that it was switching to  
22       ContextMedia and HAN gave the practice an  
23       uninstall date and HAN didn't show up?

24              A.       No, not aware of that.

Jill Brewer, 3/25/2014

134

1 Q. Are you aware of instances where  
2 HAN was unresponsive to a practice that was  
3 trying to get HAN to remove the equipment so  
4 that a competitor's equipment could be  
5 installed?

6 A. We had guidelines of the time  
7 that we give to uninstall. So if a practice  
8 wanted us to uninstall in a shorter time  
9 frame than what's outlined in the agreement,  
10 then that's fine. Our agreement says we will  
11 uninstall by these dates and times. And to  
12 the best of my knowledge, we obliged by our  
13 agreement with the practice.

14 (Exhibit 86 identified.)

15 Q. I've now handed to you what's  
16 been marked as Defendant's Exhibit 86. Excuse  
17 me. And this appears, does it not, to be an  
18 entry from the CMS database that's being  
19 forwarded by Ms. Hartfiel to Kelly Schulkers?

20 A. This is after my departure. I  
21 can't speak to it.

22 Q. Okay. In the middle of the  
23 comment it's written, "Keisha stated that she  
24 tried multiple times to contact PatientPoint

Jill Brewer, 3/25/2014

135

1 to have equipment removed and picked up prior  
2 to RHN installing it but no one came to get  
3 it." Now, I appreciate you have no knowledge  
4 of this particular instance because you were  
5 gone, but looking at that, does it refresh  
6 your recollection that, while you were still  
7 there, there were instances where HAN was not  
8 responsive to a practice on deinstalling  
9 HAN's equipment?

12:35 10 MR. BERNAY: Object to the form.

11 A. To my knowledge, during my  
12 employment, I would have given direction to  
13 stay within the agreement guidelines. If our  
14 agreement says we will -- we want X-written  
15 notice, and we need X-days to uninstall it,  
16 it is my belief that I would have worked  
17 within the guidelines or the agreement that  
18 we had with the practice.

19 Q. Did -- while you were employed,  
12:35 20 did Jennifer Hartfiel report to you directly  
21 or indirectly?

22 A. Indirect.

23 Q. And how about Kelly Schulkers?

24 A. Indirectly.

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Jill Brewer, 3/25/2014

136

1 Q. And Jennifer writes to Kelly,  
2 "Hey, I REALLY," and really is in all caps,  
3 "need you to delete this comment," do you see  
4 that?

5 A. I looked at it, yeah. I'm not  
6 even really reading it because I wasn't  
7 employed, so I don't think it's relevant to  
8 me.

9 Q. Actually, you don't get to make  
10 that judgment.

11 A. Oh, so I have to read it?

12 Q. Well, if you're going to refuse,  
13 the record will reflect --

14 A. I'm just saying, I'm not  
15 employed at this time, so I can read it, but  
16 it just -- I'm not employed, so I can't speak  
17 to anything in here.

18 Q. Yeah, but there's something  
19 called -- there's a phenomenon called  
20 "recollection refresh," and I could show you  
21 a Coke bottle and it might refresh your  
22 recollection.

23 A. To an event when I wasn't  
24 employed?

Jill Brewer, 3/25/2014

137

1 Q. No, to an event when you were  
2 employed.

3 A. Okay. So, I'll read it. Okay.  
4 I've read it.

5 Q. And my question for you is, do  
6 you recall, while you were employed,  
7 instances where folks on your team were  
8 instructing others to delete comments?

9 A. No.

12:37 10 Q. So you can offer me no insight  
11 into why she wrote this here?

12 A. No, I cannot.

13 MR. O'BRIEN: I have no further  
14 questions. Thank you.

15 MR. BERNAY: Okay. Let's just  
16 take a break for one minute so I can get my  
17 notes together.

18 MR. JAHN: We're off the record.  
19 (Break taken.)

12:41 20 MR. JAHN: We're on the record.

21 DIRECT EXAMINATION

22 BY MR. BERNAY:

23 Q. All right. Ms. Brewer, I have  
24 just a few more questions for you. As you

Jill Brewer, 3/25/2014

138

1 know, I'm Aaron Bernay, I'm counsel to  
2 PatientPoint, formerly known as Healthy  
3 Advice Networks, in its lawsuit against  
4 ContextMedia, and I just want to follow up on  
5 a few things you said this afternoon and then  
6 we'll be done.

7 You stated that you left prior  
8 to the filing of the lawsuit in this case.  
9 Are you aware of the allegations contained in  
10 that lawsuit?

11 A. I said I left in March, and to  
12 my knowledge, there wasn't a lawsuit in place  
13 at that time, just to be clear.

14 MR. O'BRIEN: And you're correct.

15 Q. Have you seen the lawsuit that  
16 was filed in this case?

17 A. I have not.

18 Q. And you're not privy to anything  
19 that PatientPoint has learned about  
20 ContextMedia as a result of this litigation,  
21 are you?

22 A. No.

23 Q. You testified earlier that  
24 enrollment agreements are important. Did

Jill Brewer, 3/25/2014

139

1 every practice that signed up with Healthy  
2 Advice have an enrollment agreement?

3 A. Yes.

4 Q. And HAN expected its practices  
5 to honor that agreement; is that right?

6 A. Yes.

7 Q. You testified earlier that the  
8 ACN network was around 160 offices and may  
9 have increased during the end of your time  
10 there, but do you know how many doctors were  
11 in the network?

12 A. I don't recall.

13 Q. You testified earlier -- strike  
14 that.

15 Again, I want to caution you not  
16 to reveal the contents of your conversations  
17 with attorneys. I just simply want you to  
18 confirm if you recall or not whether you met  
19 with counsel in early 2011 concerning the  
20 behavior of ContextMedia?

21 A. We -- yes.

22 Q. And do you recall that cease and  
23 desist letters were issued around that time?

24 A. Yes.

Jill Brewer, 3/25/2014

140

1 Q. Mr. O'Brien showed you a lot of  
2 exhibits today.

3 MR. O'BRIEN: It wasn't a lot.

4 MR. BERNAY: It's all relative.

5 A. It's easy for you.

6 Q. It felt like a lot of exhibits,  
7 right? If you look -- if you turn back to  
8 Exhibit 80 in your pile. If you recall this  
9 exhibit.

12:44 10 A. I'm getting there. 80.

11 Q. There you go.

12 A. I'm fine.

13 Q. Okay.

14 A. I'm just looking.

15 Q. Gotcha. So in Exhibit 80 he  
16 asked you several questions about this  
17 database comment and Lori's e-mail to Vida  
18 after that. Is there anything in this comment  
19 that suggests the equipment remained with the  
12:44 20 practice?

21 A. It did not stay with the  
22 practice.

23 Q. And sitting here today, did  
24 that -- it may have been lost on its way back

Jill Brewer, 3/25/2014

141

1 to Healthy Advice?

2 A. All we know is that it was  
3 removed and it was shipped, and upon receipt,  
4 the CPU wasn't in the box with the monitor.  
5 That's what this says.

6 Q. If you turn to the exhibit that  
7 just preceded that -- followed that, sorry,  
8 81. You were asked about dedicated account  
9 managers.

12:46 10 A. Em-hm.

11 Q. How many practice relation  
12 managers did Healthy Advice have in 2011, if  
13 you recall?

14 A. I don't recall.

15 Q. That's fine. During your time at  
16 Healthy Advice, up until the time you left,  
17 are you aware of any practices that switched  
18 from ContextMedia to Healthy Advice?

12:47 19 A. I'm trying to look at all the  
20 e-mails you showed me. To say, I guess, I  
21 don't remember, but looking through the  
22 e-mails it would tell you. I mean, that's  
23 easy to do. You don't need me to tell you,  
24 but sorry.

Jill Brewer, 3/25/2014

142

1 Q. But you don't recall any one?

2 A. No, I would hope we were good  
3 enough to win, but it's easy enough to track  
4 and see.

5 MR. BERNAY: All right. That's  
6 all I have.

7 THE WITNESS: Super.

8 RECROSS-EXAMINATION

9 BY MR. O'BRIEN:

12:47 10 Q. I just have a couple. In  
11 response to a question from Mr. Bernay, I  
12 believe I heard you say that you met with HAN  
13 counsel in early 2011?

14 A. I don't remember the time. I  
15 remember we had -- and frankly I don't know  
16 if I actually met with them or if it was just  
17 all over the phone, telephone conferencing.

18 Q. Okay.

12:48 19 A. That's why I hesitated because I  
20 couldn't remember if I actually met them or  
21 if it was just via phone. I know there were  
22 several phone.

23 Q. Whether it was a meeting or  
24 meetings or phone calls, do you recall the

Jill Brewer, 3/25/2014

143

1 names of any of the counsel that you  
2 interacted with?

3 A. Patil, I think. I think.

4 Q. Is that the only name you can  
5 recall?

6 A. If you listed them I could tell.

7 Q. I'm sorry?

8 A. If you could list some names, I  
9 could tell you.

12:48 10 Q. Well, let's put it this way,  
11 that's the only name you recall as you sit  
12 here today, right?

13 A. Yes, off the top of my head.

14 MR. O'BRIEN: I have nothing  
15 further.

16 MR. BERNAY: I have nothing  
17 further.

18 THE WITNESS: Yeah.

19 MR. BERNAY: Thank you.

12:48 20 MR. JAHN: We're off the record  
21 at 12:47:34.

22

23

24

Jill Brewer, 3/25/2014

144

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SIGNATURE WAIVED

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JILL BREWER

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(DEPOSITION CONCLUDED AT 12:47 p.m.)

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Jill Brewer, 3/25/2014

145

## C E R T I F I C A T E

STATE OF OHIO  
: SS  
COUNTY OF CLERMONT

I, ANN M. BELMONT, RPR, the undersigned, a duly qualified notary public within and for the State of Ohio, do hereby certify that JILL BREWER was by me first duly sworn to depose the truth and nothing but the truth; foregoing is the deposition given at said time and place by said witness; deposition was taken pursuant to stipulations hereinbefore set forth; deposition was taken by me in stenotype and transcribed by me by means of computer; that availability of the deposition to the witness for examination and signature is expressly waived. I am neither a relative of any of the parties or any of their counsel; I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D) and have no financial interest in the result of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Cincinnati, Ohio this 13th day of April, 2014.



My commission expires: ANN M. BELMONT, RPR  
December 4, 2015 Notary Public - State of Ohio

LITIGATION SUPPORT SERVICES, INC.

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